SENATE—*Thursday, June 19, 1986*

(Legislative day of Monday, June 16, 1986)

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Come unto me all ye that labor and are heavy laden, and I will give you rest.—Matthew 11:28.

Gracious God, kind Heavenly Father, there are many tired people here today. Weary in body, mind, and emotions, exhaustion threatens. Yet, there is no escape from the legislative burden which weighs so heavily. Nerves are raw, tempers are edgy, irritability lies close to the surface, harsh words come easily, and the work will not go away. Cover this place with Your peace—fill hearts with Your love—infuse our souls with patience—surprise us with the reality of Your presence. Manifest Yourself in ways which will defuse the explosive potential seething within us. Give each of us grace to come to You in the midst of the pressure and find the rest of God. In Jesus' name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

THE SENATE AGENDA

THE CHAPLAIN'S PRAYER

Mr. SIMPSON. Mr. President, again we deeply appreciate the words of our Senate Chaplain, Richard Halverson, as he seems to so beautifully address the tenor of the moment in this place. And he was quite dramatic, I thought, this morning. Words were used like "seething" and "explosive"—and I actually listen to those because I have such great admiration for this man—and "exhaustion threatens," if I remember the exact phrases. And, indeed, that is true.

PERSPECTIVES

But, I also always try to keep it in perspective. We really do not kill ourselves around here. When we leave town, our staff manages to find diversions throughout the city that seem to please them. And I always say to my fine people—and they are superb—I say, "Remember, now"—when we go off on a 10-day recess or a month or 2 weeks—"remember that when we get to one of those situations where we are doing three long shots in a row at night until about 2 in the morning."

They say, "Oh, we will; we will remember that." But they do not.

Then along comes, in the midst of something where we have Monday off and do not come in until Tuesday at 2 and go off at Friday, and suddenly we have three nights in a row where we kind of plow the Earth for a while, which is what we are supposed to do—it is called legislating—and, by gad, you know, they have some feeling about that. And we do, too. And we get ornery. And we are ornery. I have proven that time and again. I do cross the line between good humor and smart alec and recognize that in myself.

But really, we are a very privileged group of human beings. And when we have to act like draft horses instead of show horses, it is a little tough for us. But it sure will not hurt us at all, not a bit, to do a little heavy lifting and windows and haul trash and answer the ad. So that is what we are up to.

And this fine majority leader is going to push us on. And the only thing that ever seems to make a difference in that exercise is the advent of Friday. Friday seems to focus our interest and attention. And Friday is coming. My hunch is that we will see some unanimous-consent agreement worked up where we will get our work done, whether it is 75 amendments or 8 amendments.

I was fascinated last night as some of the principals, as we are known in the trade to our staff, rather than Senators, suddenly shoveled their amendments through the back door as it was amendment discussion time, saying, "get this up to the desk." And, of course, the principal is unaware that their fine staff has shoveled them into five new amendments which they do not know the text of or the content of. But it is good for the cause. So we are sorting through those. There will probably be 120 some time during the day.

And then the principals, as they are known, will grab their staff in Chambers and say, "What is this? Where did it come from? Why am I going to haul the water on it?" And that will take place today and tomorrow and we will reach some kind of an appropriate agreement, maybe with a time certain for a vote, and do our business. And we will.

But, again, it is always focused by the "Friday focus," as I call it. It is always more fun to manage a bill if you start on a Wednesday here. Never start on a Monday. Too much time to be overly creative. And we certainly see a good deal of that on this.

But, in all great seriousness, this is a most important piece of legislation. I do not think there is anyone that doubts that. It has a fine bipartisan flavor to it, to watch Senator PACKWOOD, Senator LONG, Senator BRADLEY, Members of both parties working so hard to get to a result and have a major turning point in our tax laws which are bloated and riddled with special considerations.

And so here we are. And the interesting part of it, of course, that we must hurdle is that everyone says it is a marvelous bill: "Thank you for what you have done. I surely support it. I'm ready to get to a vote. I only want to make a few changes." And on and on. It is called the "Yes, but" syndrome. "Yes, I like it, but I just have a clarification" or something.

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So if we could override the "yes, but" syndrome, we will get to this conclusion of a very critical piece of legislation which will go to conference, and in conference, you know, hold on tight. But I know BOB PACKWOOD, I know Senator LONG, and I know DANNY ROSTENKOWSKI. I know the President. I know JIM BAKER. And they are not going to let this thing sink. It will not sink. It is our job then to move this part of the package on. We are going to do that. We are going to do that very swiftly within the next few legislative hours.

SCHEDULE

Mr. SIMPSON. So, to just review the bidding of the day, we have the morning business not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein for not more than 2 minutes. At the conclusion of routine morning business we will resume consideration of H.R. 3838, the tax reform bill. Rollcall votes obviously are expected throughout the day, into the evening, and thereafter.

The following Senators will be recognized under the special orders for a period not to exceed 5 minutes each, if time permits: Senators HAWKINS, PROXMIRE, STEVENS, MURKOWSKI, GORE, HUMPHREY, MELCHER, PRESSLER, BUMPERS, and EXON. If they are not

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

here during that period of time, perhaps we can accommodate them at another time during the day so that we can do our business.

With that, I will yield 1 minute of the leader's time to Senator COCHRAN to insert a statement in the RECORD.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER (Mr. BOSCHWITZ). The Senator from Mississippi is recognized.

HALEY BARBOUR

Mr. COCHRAN. I thank the distinguished acting majority leader for yielding leader time to me.

I rise this morning to commend the President for his appointment of Haley Barbour as Director of the White House Office of Political Affairs. Haley Barbour is from my State of Mississippi. He is a good friend of mine. He is very talented. I know he will bring to this job the same kind of expertise and skill that he has brought to the other tasks he has had, positions of responsibility in the Republican Party, as a lawyer, and as a committed citizen.

He has a distinguished career as a young man. After graduation from the University of Mississippi School of Law in 1973, he began serving as executive director of the Mississippi Republic Party, and he served in that capacity for 3 years.

In 1978 I was fortunate to have him serving as chairman of my steering committee in my campaign for the U.S. Senate. In 1976 he served President Gerald Ford as his campaign director in the Southeastern States.

He is a member of the Republican National Committee now having served in that capacity for the past 2 years. He is a good lawyer, and I know he will serve the President with distinction in this new capacity.

I congratulate the President for selecting Haley Barbour for his important job.

Mr. President, I thank the distinguished acting leader.

Mr. SIMPSON. I thank the Senator from Mississippi.

I, too, know Haley Barbour. He has a splendid record. We are glad to have him there.

I reserve the balance of the leader's time, and yield to my friend from Wisconsin, Senator PROXMIRE.

Mr. PROXMIRE. Mr. President, I appreciate that very much. I see the distinguished Senator from Florida on the floor. I think her special order preceded mine, so I will be happy to yield to her.

I would like to ask unanimous consent that the time of the minority leader be reserved for his use later in the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 10 a.m., with statements therein limited to 2 minutes each.

RECOGNITION OF SENATOR HAWKINS

The PRESIDING OFFICER. Under the previous order, the Senator from Florida [Mrs. HAWKINS] is recognized, for a period not to exceed 5 minutes.

NEW APPROACH TO PROBLEMS ALONG THE SOUTHWEST BORDER

Mrs. HAWKINS. Mr. President, the word "crisis" is overworked these days. It has been used so extensively to describe conditions and situations that we need a new word—"supercrisis," calamity, or something like that. Whatever that new word is could be used to describe appropriately the scene on the Mexican border. Drug smuggling, arms trafficking and illegal immigration have reached a stage beyond "crisis" proportions. Drugs being smuggled across the border are at record highs. Some 427,000 persons were apprehended last year trying to cross the border illegally. The Immigration and Naturalization Service says for each person who is caught, another two or three make it through to the United States. Crime follows in the wake. Aliens without papers and proper documentation usually have no jobs or means of livelihood. Many resort to crime in order to survive.

It is against this background that our Government has concluded that something has to be done and it has to be done now. In the near future hundreds of Federal officers will be sent to Texas, New Mexico, Arizona, and California to help with the border problem. This is no fragmented, Band-Aid approach. It will be a closely coordinated effort on the part of several Federal agencies.

Assistant Treasury Secretary Francis A. Keating II, is head of an interdepartmental task force which is planning the operation. He understandably is close-mouthed about the details at this time. The Southwest border initiative does not wish to tip its hand and alert drug traffickers in advance. But the enterprise will be similar in certain respects to the South Florida Drug Enforcement Task Force, which has been functioning so effectively under Vice President BUSH. The Southwest border initiative will combine the resources and assets of various Federal agencies to fight drug trafficking and illegal immigration. And it will equip local law enforcement organizations with the most modern equipment and sophisticated devices. The Southwest effort owes its existence in part to the south Florida task force and its crackdown on drug trafficking. Smugglers have found it difficult to do business in Florida, the cost is high and the losses are great. In recent months they have shifted their operations to Texas, Arizona, New Mexico, and California where it is easier to move drugs across the border.

Mexico has become the largest supplier of heroin, marijuana, and illegal amphetamines to the United States. Mexico's economy is in a slump, largely as a result of the decline in oil prices. Unemployment is rampant. Our Immigration and Naturalization Service forecasts that 1.8 million illegal immigrants will cross the border this year, half again as many as last year. The head of the U.S. border patrol, Roger Brandemuhl, describes the Southwest border as "a monster that is growing, feeding upon itself."

The lead agency in this new antidrug effort will be the Customs Service, whose Chief, William von Raab, has minced no words in expressing his unhappiness about what is going on along the border. It is a "horror story" is the way Commissioner Von Raab describes the drug trafficking and violence taking place there. Corruption at all levels of the Mexican Government is a major problem and is a barrier to effective law enforcement. The drug smugglers call the tune and Mexican officials dance to it. Governors of two Mexican states have been linked to traffickers and a relative of the Mexican President is rumored to be involved with smugglers. Every time we try to get some help from Mexican officials in trying to stop drug trafficking, they go into a Mexican hat dance.

I, for one, welcome this new Southwest border initiative. And I hope it turns out to be the answer to the thorny problem of drugs, violence, crime, and illegal immigration along the Mexican border.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin [Mr. PROXMIRE] is recognized for not to exceed 5 minutes.

THE CHAPLAIN'S PRAYER

Mr. PROXMIRE. Mr. President, I, too, want to comment on the prayer by the Chaplain. As I told the Chaplain the other day, his prayer starts the Senate off on a very high plane. We go downhill after that, I am afraid. I particularly appreciate his reference to the fact that with the short tempers under these circumstances harsh words come easily, as he put it. It was a beautiful phrase, a phrase I hope all

of us will remember, and restrain ourselves.

VULNERABILITY OF SPACE TECHNOLOGY MAKES STAR WARS A LOSER

Mr. PROXMIRE. Mr. President, last Sunday in the New York Times an article by William Broad spelled out in detail the consequences of recent space disasters on the SDI or star wars program. Broad's article reveals a recognition by the top research experts in the program that the tragic explosion of the *Challenger* shuttle on January 28, and the explosion of a Titan 34D rocket on April 18 will seriously delay the massive star wars program.

Here is why: A costly and essential requirement of the SDI program is to lift the enormous hardware of a medium-sized SDI project into space. Broad reports that here is what the official star wars estimates show: First, they show the present technology is grossly inadequate. The cost would be between $87 billion to $174 billion. The time required to do the job is even worse. If we assume the capacity for shuttle flights doubles from the present most optimistic forecast of 12 flights a year to 24 flights a year—the time it would take to lift this hardware into orbit would be 58 years! Those were the estimates before the *Challenger* disaster.

So obviously we will need a far more advanced and expensive space transportation system for SDI deployment.

Broad reports that the Defense Department has begun lobbying for an enormous, new rocket or "space truck." Of course, the costs would be colossal. Broad quotes top star wars officials as estimating between $20 billion and $40 billion investment as the cost of the necessary new space transportation system before the country can begin to "realize lower operating costs." All this must come in a technology which, as we press ahead, we can expect to bring its share of costly and delaying crashes and explosions before we prove and establish it. Every setback, and there will be many of them, may mean a year or two of delay. Every setback will mean billions more in cost.

Mr. President this colossal space transportation program comes on at a time when there is huge backlog demand for increased space for military space programs more immediate and urgent than SDI, and for other nonmilitary high priority space programs. Space experts expect that for the next few years the available money will not even go into research for the giant space truck lifters. For the next few years the money will go into the so-called midsized vehicles to lift satellites into space. Competition will also come from the multibillion dollar new space station and the new spaceship that will cost $3 billion for research alone.

Mr. President, as time goes on, the serious questions about the cost of the star wars program increase. As we learn more about the fragility and vulnerability of our relatively simple shuttles and rockets, the always long shot prospect of a successful space defense against nuclear missile attack becomes increasingly dim. We are beginning to realize that SDI represents a very high risk and a very, very long shot bet. It demands that the Congress toss a trillion dollars or more on the table with 1 chance in 100 or 1 in 1,000 or more that we can win. This comes at a time when in spite of all our earnest intentions with Gramm-Rudman, the Federal deficit moves relentlessly ahead with 1986 as still another year of a budget deficit in excess of $200 billion. For us to consider this star wars gamble has always been irresponsible. But now that we have been reminded of the high risks involved in space technology by the *Challenger* crash and the Titan explosion, and now that we have been once again made aware in the nuclear tragedy in Chernobyl of the unreliability of nuclear technology, we should walk away from this long shot roll of the dice. Safety and life will come far more surely from painstakingly negotiated and verified arms control agreements than from star wars.

Mr. President, I ask unanimous consent that the article in the June 15, 1986 edition of the New York Times to which I have referred be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, June 15, 1986]

REVERBERATIONS OF THE SPACE CRISIS: A TROUBLED FUTURE FOR "STAR WARS"—OFFICIALS SAY PROBLEMS ARE MINOR, BUT OTHERS CITE WIDE DISARRAY

(By William J. Broad)

The Challenger disaster and a series of other major setbacks in the American space program have damaged President Reagan's antimissile plan in ways that are far more serious and extensive than has generally been realized, according to scientists and aerospace analysts.

Officials of the program, formerly called the Strategic Defense Initiative and popularly known as "Star Wars," deny that there is serious damage, saying that any problems are minor and that the program as a whole is moving ahead vigorously.

PLANS FOR GIANT NEW ROCKET

But during more than two dozen interviews with a wide range of aerospace experts both inside and outside the Government, analysts said the grounding of the nation's space shuttles and expendable rockets had thrown a schedule of complex space-based experiments into confusion and disarray, sending shock waves through space research programs across the country and demoralizing some scientists in the antimissile program.

Another repercussion of the aerospace crisis, they say, is its effect on a controversy over whether the Government should start now to develop a giant new unmanned rocket—far larger than the shuttle—that would be needed in the 1990's to lift thousands of antimissile weapons, sensors and various aiming and tracking devices into space.

The crippling of the nation's rocket power, the analysts add, underscores the need for the enormous battery of space vehicles that will actually lift the proposed defensive system into place. Even before the shuttle disaster, "Star Wars" officials estimated that the deployment undertaking was big enough to require up to 5,000 launchings of shuttles or shuttle-sized rockets.

In general, some analysts say, setbacks in research, transport and morale could result in a crucial losses for the antimissile plan. Senator William Proxmire, Democrat of Wisconsin, a critic of "Star Wars," suggested that the aerospace crisis had already contributed to "a loss of political momentum" in the program.

"There's been a tendency to race and push this program as far as possible," Senator Proxmire said. "Defense officials realize it's very unlikely that the next President, whether Republican or Democrat, will be as big an S.D.I. enthusiast as Reagan."

Whatever the ultimate impact on the program, many aerospace experts agree that the crisis could hardly have come at a worse time. After maturing for years in laboratories on earth, "Star Wars" research had reached a point where it was ready to burst into the heavens in some of the most spectacular experiments of the space age. The explosion of the shuttle Challenger, along with three other launching failures involving Titan and Delta rockets, have brought these plans to an abrupt halt.

Whereas delays might be bearable in a world of unlimited time and money, some experts said postponements could be a major setback in the world of Washington politics.

Senator Proxmire said the perception of crisis in the "Star Wars" program was one reason why 48 senators recently signed a letter calling for sharp cuts in the Administration's proposed $5.4 billion antimissile budget for next year.

SCHEDULING DELAYS AND TECHNOLOGY LEAPS

Other experts outside the "Star Wars" program say delays in the schedule resulting from the launching failures will almost certainly be great. "It could be as much as two years," said John E. Pike, director of space policy at the Federation of American Scientists, a private, nonprofit group in Washington that is skeptical about the antimissile plan.

Although conceding that minor damage has been done to the program, "Star Wars" officials say most of the problems associated with space setbackss will vanish with the renewal of shuttle and rocket flights, allowing space-base experiments to resume.

"The advance of technology is inexorable," said Dr. Gerold Yonas, chief scientist of the antimissle program.

Dr. Yonas stressed that any delays in space-based experiments had to be seen in relation to the overall research program, which he said was forging ahead. "We're making steady progress in many important areas," he said.

Other "Star Wars" officials dismissed questions of lost momentum, Lieut. Col. Lee

De Lorme of the Air Force, director of public affairs for the Pentagon's antimissile program, said, "Some charges from critics are not worth addressing because they're without substance."

In contrast to program officials, some scientists who are part of the program said they have been demoralized by the delays.

"Part of the strategy was to do significant experiments before Reagan left office," said Dr. George Chapline, a key researcher in the antimissile program at the Lawrence Livermore National Laboratory in California. But he said that hope was "fading," a fact he said he and his colleagues found "depressing."

The recent string of aerospace disasters started Jan 28 the $1.2 billion Challenger exploded 74 seconds after liftoff, killing seven astronauts, destroying a $100 million satellite, and grounding the nation's shuttle fleet for at least 18 months, until July 1987. Privately, officials of the National Aeronautics and Space Administration say the next launching is likely to be put off until 1988.

"We're going to have to delay and push back many of the programs we had planned for the shuttle," including antimissile tasks, Defense Secretary Casper W. Weinberger said two days after the Challenger explosion. Some small military payloads could be put on expendable rockets, he said, "but a lot of the experiments were configured to the size and shape of the shuttle."

The next aerospace accident occurred April 18, when a Titan 34D rocket exploded after liftoff from the Vandenberg Air Force Base in California, destroying a secret military payload. It was the second Titan failure in a row. Then, on May 3, a Delta rocket failed about 71 seconds into the flight.

A LAUNCHING SQUEEZE EVEN BEFORE THE CRISIS

"We were suffering from a shortage of lift capability" even before the disasters, Lieut. Gen. James A. Abrahamson of the Air Force, director of the antimissile program, told a group of business executives in May.

For the moment, the crisis has halted the nation's ability to lift major satellites into orbit and stopped its scientific tests in space.

Rocket power is no small part of the antimissile vision. By official "Star Wars" estimates, deploying what the Government calls a medium-sized defensive system in space could take up to 58 years and cost from $87 billion to $174 billion if the task was undertaken with existing rockets and space shuttles. This estimate assumes the nation has the capacity for 24 shuttle flights a year, which, before the accident, was the most optimistic prediction for the shuttle's flight pace. Today, experts say the most optimistic forecast is 12 flights a year.

Aerospace experts say one way to gauge the effect of the crisis on the "Star Wars" research program is to look at the way the program had begun to rely on space experiments, especially right before the Challenger disaster.

No known antimissile experiments had been carried out by the shuttle until its 18th flight, in June 1985, during which a beam from an earth-based laser was bounced off a special mirror aboard the shuttle Discovery. After that test, however, fully half of the six shuttle flights before the Challenger explosion carried either minor "Star Wars" experiments or civilian tests with results that were studied by the Pentagon's antimissile program.

Starting in 1986, the pace of testing was to have accelerated considerably, according to a schedule made public last year by NASA. The NASA plan said six major "Star Wars" shuttle tests, as well as "a variety of cabin and potential get-away special experiments," were scheduled to occur between 1986 and 1988.

"Star Wars" officials say that there were such schedules but maintain that they were tentative at best. Aerospace experts, on the other hand, have accused the program's officials of rewriting schedule history to try to play down the aerospace problems.

All agree, however, that preparations both major and minor antimissile tests were picking up rapidly before the Challenger crash.

For small "Star Wars" payloads, a new handling installation was recently opened at the Cape Canaveral Air Force Station in Florida, adjacent to the shuttle launching pads at the Kennedy Space Center. Known as the Space Experimentation Center, the military installation includes a laboratory for visiting scientists, a training area for astronauts, and a clean room for payload assembly, checkout and storage.

"We have a center, but we're on hold," said Maj. Marcia A., Thornton of the Air Force, deputy director of the Space Experimentation Center, with headquarters at Patrick Air Force Base nearby.

"We'll probably have six experiments in the first year the shuttle is flying again," she said, discussing the cargo manifest. "But that estimate may be wrong because it depends on the manifest, which is a mess."

The first large test of 1986 was to have occurred in July during the first shuttle flight from the Vandenberg Air Force Base in California, which recently completed a $2.8 billion military launching pad.

Vandenberg was to send shuttles into orbit about the earth's poles, which is not possible from the Kennedy Space Center. Polar "Star Wars" tests are crucial since, in a war, a space-based defense would have to find and destroy enemy warheads streaking over the North Pole towards the United States.

A key experiment was to have involved the Cryogenic Infrared Radiance Instrument for the Shuttle. The instrument, referred to as Cirris, is a super-cooled infrared sensor meant to gather data about the earth's aurora and other natural glows. If not countered, such radiations might blind the anti-missile program's "eyes" in space.

The Air Force has said, however, that it might mothball the Vandenberg installation until 1991, when a replacement for the shuttle Challenger could become available.

"We're just rolling with the punches," said Lieut. Darrel Wright of the Air Force Geophysics Laboratory, a sponsor of the Cirris experiment, which is at Hanscom Air Force Base in Massachusetts.

One option under study is to fly Cirris on a shuttle launched into an semi-equatorial orbit from the Kennedy Space Center, although this prospect leaves researchers glum. Dr. Allan J. Steed, director of the Center for Space Engineering at Utah State University, which built Cirris, said: "Auroral measurements would be severely handicapped from the Cape. It will be depressing if we have to abandon the polar orbit."

According to the NASA plan, the big "Star Wars" shuttle test of late 1986 was to have involved pointing a laser beam and using it to track targets, including satellites and rockets. Such laser tests, known as Tracking and Pointing Experiments or T.P.E., were expected to be quite showy; some critics have called them "publicity stunts." Whatever their merit, the tests have been delayed.

Experts say it is hard to say how long the delay will last because of the chaos in the program and the fact that "Star Wars" officials often try to keep tentative schedules and technical details of future tests secret, even from Government experts.

"It's been difficult to extract their space-based plans," said Dr. Arthur F. Manfredi Jr., an aerospace analyst at the Congressional Research Service of the Library of Congress.

According to the industry newsletter Military Space, the Pentagon's first tracking and pointing mission has been pushed back until October 1988, indicating "that the first major S.D.I. experiment will fly before the next U.S. Presidential election."

Experts are divided on whether the pace of delayed space-based experiments will be sufficient to keep the antimissile program on schedule.

"I'm a technological optimist," Dr. Manfredi said. "If we're back in the shuttle business by late 1987, that gives S.D.I. four or five years" for research before a decision is made on whether to deploy an antimissile system.

According to optimistic predictions, "Star Wars" payloads will be given top military priority once the shuttle fleet is again on its feet. Some aerospace experts note, however, that the military has a growing backlog of other critical payloads waiting, such as communication and spy satellites.

"The question," said Dr. Robert Jastrow, a geophysicist at Dartmouth College and a prominent proponent of the antimissile plan, "is whether S.D.I. tests will get high enough priority to keep the program on schedule."

Milton R. Copulos, the senior aerospace analyst at the Heritage Foundation, a conservative research institute in Washington, said, "A lot of stuff is going to be backlogged, no question about it."

Last week, General Abrahamson, the "Star Wars" director, told some of the program's scientists that the grounding of the shuttle fleet "isn't immediate threat" to the program. "It isn't a crippling effect for right now," he said.

Aware that pressures will mount in the future, Pentagon officials have lobbied for an expanded shuttle fleet. On Feb. 19, Defense Secretary Weinberger told the House Foreign Affairs Committee that a shuttle to replace Challenger was crucial for antimissile testing.

But some experts say the rate of future shuttle flights, no matter how big or small the nation's fleet, will probably be slower than expected, putting a crimp in testing for the space-based antimissile program.

"SPACE TRUCK" PLANS: GIANT HIGH-TECH ROCKET

If, in the mid-1990's, the Government decides to go ahead and build an antimissile system, the Pentagon will need something other than the shuttles to lift thousands of space sensors and weapons into orbit. "Star Wars" officials drew this conclusion when they made their estimate that up to 5,000 shuttle flights would be needed to deploy an antimissile system in space.

The Pentagon has thus begun lobbying for a gigantic new highly advanced rocket, or "space truck," that is much bigger, cheaper and more reliable than the shuttle. The goal is to slash the cost of lifting payloads into space, making it at least 10 times cheaper than with the manned shuttles. Achieving this goal, however, will itself be expensive because—as "Star Wars" officials

themselves say—a revolution in the structure and operations of the aerospace industry will be needed to create the rocket, reducing reliance on manpower and increasing the roles of computers and robots.

A leading candidate for the "space truck" is known as the Shuttle-Derived Vehicle, or S.D.V. This technological giant would be similar to a shuttle in that it has an external fuel tank and twin booster rockets. The difference is that the shuttle would be replaced by a huge unmanned payload carrier. According to Martin Marietta, the mostly reusable Shuttle-Derived Vehicle could ferry up to 150,000 pounds of cargo into orbit, more than three times the shuttle's lifting capacity. Other proposed new boosters would lift even more.

"Star Wars" officials say they are optimistic about the chances for a quick start on this type of big cargo ship, even though it will require a huge investment.

"The costs are going to be staggering," Col. George Hess of the Air Force, a senior "Star Wars" official, told an industry symposium in April. "You're looking at a $20 billion to $40 billion investment by this country to get to the point where you can realize lower operating and life-cycle costs."

The feasibility of building such a big rocket is already under intense study by NASA and the Defense Department. The first phase of this 26-month study is to be delivered to the White House National Security Council "shortly," according to Darrell R. Branscome, a special assistant to the director of NASA's shuttle program.

But aerospace experts see problems on the horizon. One is that big new boosters will have to compete with the need for many billions of dollars to rebuild the shattered space program.

"I don't think you're going to see a new start on a big booster anytime soon," said Mark R. Oderman, vice president of the Center for Space Policy Inc., a consulting concern based in Cambridge, Mass. "The near-term dollars will go into replacing the shuttle and buying shuttle-compatible launchers. The future push will be for mid-sized vehicles" that the Air Force wants for lifting medium-weight satellites into space.

Already, there are signs of deep divisions in the White House over whether and how to buy a Challenger replacement, the cost of which has been estimated at $2.8 billion.

In addition, a big new booster will have to compete against two new projects proposed by President Reagan: an $8 billion space station and a 21st-century spaceship that could take off from a runway and fly into orbit. The plane will demand research outlays alone of some $3 billion in the near future.

One solution to the Government's booster challenge, according to Mr. Copulos of the Heritage Foundation, is for the antimissile program to seek the aid of the private sector in trying to cut the cost of launching large payloads. "If the money is there from private sources, they should do it," he said. "It's very possible and it requires a considerable amount of free enterprise."

A difficulty with any plans for developing large "Star Wars" boosters is what one NASA official calls the "uncertainty" factor. By the 1990's, a need for large boosters may or may not materialize, depending on whether the Government decides to deploy an antimissile system.

TRYING TO CUT COSTS AS UNCERTAINTY GROWS

"The question," Philip E. Culbertson, NASA's general manager, told Congress last year, "is how to develop a system to handle that kind of uncertainty while at the same time trying to drive its cost down."

In addition, critics of the "Star Wars" program said the recent string of launching failures has increased the uncertainty surrounding the big new booster. Senator Proxmire said the crisis will "increase the time, cost and risk" of developing a big new booster. "At best," he said, "it will mean some postponement, perhaps a long one."

In contrast, some "Star Wars" proponents say the crisis could have positive effects, nothing that the evolution of booster technology can be aided by mistakes. "The more information we gain about failures, the better we can improve reliability," said Dr. Peter E. Glaser, vice president of Arthur D. Little, a research concern in Cambridge, Mass.

No matter how much is learned, the prevailing view is that the cost of the education will be great. Aviation Week and Space Technology, a respected industry journal and firm supporter of the "Star Wars" plan, recently published an editorial saying the aerospace difficulties revealed a "quality control crisis developing within NASA, the Air Force, and the U.S. aerospace industry." It added there was "a lot of work to do in pulling the U.S.'s space act together before we take it on the road to the stars."

If the recent aerospace crisis increases the costs of future space transportation, it will have a direct bearing on a set of standards for the antimissile program known as the "Nitze criteria," named after Paul H. Nitze, the Government's senior arms control adviser. Last year he said, in essence, that antimissile defenses should cost less than Soviet countermeasures to thwart them.

In practice, this means that defensive weapons in space must be "survivable," a goal that calls for such things as heavy shielding to protect battle stations from attack and powerful jets to move them during space wars. Both those precautions mean defensive weapons will have to become heavier—and thus costlier to lift into orbit.

In Congressional testimony last year, General Abrahamson, the "Star Wars" director, reflected on the survivabililty challenge. "That is a very tough criteria in the whole research program," he said, "and space transportation is a large factor in that."

More recently, in April, General Abrahamson suggested that the Nitze criteria be replaced by a less rigorous formula: that defenses simply be "affordable."

A BLOW TO THE IMAGE OF INVINCIBILITY

The effect on morale is perhaps the most complex of all issues raised by the Challenger crash. Some proponents of the "Star Wars" program say they are depressed by recent developments, some program officials seem defensive, and still other advocates of the program seem almost philosophical, trying to find positive lessons.

Dr. Jastrow, the Dartmouth professor, said the crisis pointed up the problems inherent in firing any rocket, whether it is carrying astronauts or nuclear warheads. "It reflects on the vulnerability of offensive arms," he said. "Missiles are inherently fragile. With the shuttle, all it took was a faulty gasket to destroy this enormously expensive vehicle."

Whatever the merit of such arguments, there is little doubt that advocates of the "Star Wars" program were inspired by the achievements of the space shuttle before the crisis. Even President Reagan, in an address to the National Space Club last year, hailed the challenge of the "Star Wars" plan, adding later in the speech that "the grandeur of the space shuttle taking off and then landing after a successful mission has been a source of inspiration to America."

Today, the loss of the shuttle is said to be having an unsettling effect on Capitol Hill. One Senate aide summed up what he called a new mood. "Challenger and Chernobyl have stripped off some of technology's mystique," he said. "The message is that we're still pioneers. It's going to be a long time until we're star warriors."

The aide added, "They say they can deploy radars the size of football fields, but right now they can't even put up an armchair."

An official in the Congressional Budget Office described the Washington mood this way: "The accidents have thrown everybody's vision into confusion. There's a lot of chaos. Having talked to these S.D.I. people, and seen the budget environment, the current technology and so forth, it's hard to see Congress coming up with a full commitment to S.D.I."

THE SPACE SHIELD PLAN: "STAR WARS," 3 YEARS LATER

On March 23, 1983, President Reagan called on American scientists to find ways to erect a missile defense shield to render nuclear weapons "impotent and obsolete."

In the months that followed, his proposal, formally called the strategic defense initiative and popularly called "Star Wars," began to be described as one of the biggest research projects of all time, a five-year, $26 billion undertaking that rivaled the Manhattan Project for the atomic bomb and the Apollo program to put men on the moon.

Today it is estimated that "Star Wars" research alone will not be completed before the mid-1990's, and cost at least $90 billion. Experts outside the Government have estimated that building an antimissile system could cost $1,000 billion or more.

The space "shield" would not really be a shield but rather a complex network of orbiting and earth-based systems, including laser beams, particle beams, electromagnetic "slingshot" rail guns and sensing, tracking and aiming devices, all requiring extraordinary coordination by humans and computers.

One of the most ambitious defensive systems now envisioned by military planners, out of the many possibilities under consideration, calls for a complex, seven-layered system that would consist of thousands of satellites with weapons intended to furnish nearly perfect nationwide protection.

□ 0950

THE MYTH OF THE DAY

Mr. PROXMIRE. Mr. President, the myth of the day is that Congress is serious about reducing the deficit. The truth is that Lewis Carroll, who wrote "Alice in Wonderland," had our number when he penned the line, "The rule is, jam tomorrow and jam yesterday, but never jam today." We are always going to reduce the deficit—next year.

This is a harsh judgment and one I do not make lightly. After all, Congress last year passed the Gramm-Rudman legislation, which established

a schedule for reducing the deficit to zero by 1991. Given that this law has been on the books for less than a year, why do I believe that the large deficits will continue?

First, look at how the economy is performing. Despite lower interest rates and a fortuitous drop in oil prices, the economy is not doing that well. The result is going to be higher deficits. For fiscal year 1986—the first year of Gramm-Rudman—the deficit is likely to set a new record by exceeding the previous high of $212 billion.

Second, this new record will be established while the economy is performing sluggishly but is not in a full-blown recession. We have yet to find a cure for the business cycle which means that we will have another recession any year now. In fact, we are much more likely to have one long before we balance the budget. And when that recession hits, the deficit will skyrocket, Gramm-Rudman or no Gramm-Rudman.

Finally, the deficit targets we established are running afoul of political reality. The administration is stonewalling against any additional revenues. Defense spending, as opposed to authority to spend, will continue to increase because the Pentagon has a purse stuffed with past appropriations. And both Houses of Congress demonstrated during the debate over the 1987 budget that the fire has gone out of the effort to cut domestic spending.

Where do we go from here? The arithmetic is appalling. The fiscal year 1986 deficit will be around $220 billion even though the economy grew during 1985 and 1986. To bring it down to $144 billion in fiscal year 1987 means a reduction of about $76 billion. Before fiscal year 1981 this Government never had a total deficit that large and here we are casually assuming a reduction of that size.

Experience teaches us that a reduction of that size is unrealistic. We may be able to project a deficit of $144 billion in fiscal year 1987, but making that projection a reality will not happen.

RECOGNITION OF SENATOR HUMPHREY

The PRESIDING OFFICER. Under the previous order the Senator from New Hampshire is recognized for not to exceed 5 minutes.

ALLIANCE FOR AFGHANISTAN

Mr. HUMPHREY. Mr. President, this week we here in the country are honored by the visit of the representatives of the Alliance for Afghanistan who have come to this country at President Reagan's invitation to meet with him at the White House on Monday. I salute the President for extending this invitation to these courageous leaders.

The President has unquestionably raised the standing of the alliance and the struggle of the people of Afghanistan in the eyes of the American people by this invitation. Of course, he has done that in many ways, but this week by the invitation to these leaders. Indeed, he has raised the standing of the alliance as a political body and a legitimate entity in the eyes of many nations in the world.

Mr. President, the struggle of the Afghan people is by now well known to the people of our own country. Before the Soviets invaded in 1979 there were approximately 15 million persons living in Afghanistan. Today, approximately one-third of that number, 5 million, have fled their country, living in exile. They today constitute the largest single group of refugees in the world. In addition to those who fled, nearly 1 million of the 15 million have been killed or wounded. That includes women and children. The war in Afghanistan is brutal. It is inexcusable. We and other nations who are concerned about freedom must do all that we can, not only in terms of bringing to bear military pressure but economic pressure and diplomatic pressure as well.

On that point of diplomatic pressure, the President has brought a new pressure to bear by inviting these leaders to Washington and raising their standing in the eyes of the world.

Mr. President, the majority leader and I this morning will be hosting a reception for the Afghan leaders in the majority leader's office, S-230, between the hours of 11 and 12 o'clock. We urge all Senators to attend by way of showing solidarity for the Afghans.

I want to take this occasion before relinquishing the floor, Mr. President, to thank my colleagues for having yesterday passed a resolution welcoming the Afghan leaders and encouraging them in their struggle. It is worth observing that that resolution passed by a vote of 98 to 0.

RECOGNITION OF SENATOR MELCHER

The PRESIDING OFFICER. Under the previous order the Senator from Montana is recognized for not to exceed 5 minutes.

TAX REFORM ACT

Mr. MELCHER. Mr. President, as we consider the tax bill here in the Senate, it is significant that few of the taxpayers across the country have actually zeroed in on just how the tax bill will affect them next year.

What everyone should remember is this, that the tax bill for all taxpayers, if enacted into law by the Senate, will mean an increase in their taxes for next year.

Second, about one-third of the middle class will find that their tax bill will be higher, their tax obligations will be higher, for not only 1987 but 1988 and in the years beyond that.

As to agriculture and other basic industries of this country, they are not well served by this tax bill at all. They will find that their taxes have been increased because some of the deductions that have been built into the code are repealed.

One of those is capital gains. Last night we made an effort here on the Senate floor to modify the tax bill as it affects capital gains for the farmers and ranchers of this country, and also those people who own some timberland; that is, small woodlots, as they are called across the country. After all, 70 percent of the forests of this country are not national forests. They are privately owned and the bulk of them are privately owned by individuals who own a small acreage of timberland.

Capital gains for them is very important as it is for agriculture and the other basic industries. We only had 32 votes on that amendment last night. I think, Mr. President, that that points out that it is an uphill battle to change any of the features in this bill. Nevertheless, we feel compelled to make solid attempts to modify the bill to make it more workable, more equitable and fair.

Beyond that, we are trying to do something to help the economy of this country by helping our basic industries. Agriculture is on the ropes. The forest products industry is just teetering. Mining is going down the tube. These are industries on which the whole economy is built.

So it behooves us—in fact, we have a real responsibility—to attempt to make changes in the bill that would be more favorable, more reasonable, more equitable.

Mr. President, I yield the floor.

RECOGNITION OF SENATOR STEVENS

The PRESIDING OFFICER. Under the previous order, the Senator from Alaska is recognized.

TONGASS NATIONAL FOREST

Mr. STEVENS. Mr. President, I rise today to discuss a flyer which has been received in my office. It is one which is most misleading. I think other Members of the Senate and the Congress may receive a copy of it. I think it is important for us to call it what it is.

It is a flyer that has been sent by the Wilderness Society to raise money to stop logging in the Tongass Nation-

al Forest which was set aside in order to preserve a portion of Alaska for the purpose of assuring sustained yield production of timber from that forest.

It so happens that a considerable portion of that forest has been withdrawn as wilderness.

This flyer which has now come to us indicates "America's national wealth, the Tongass National Forest."

Mr. President, it has a picture of Mt. McKinley National Park and Wonder Lake in front of it. It has the word "sold" stamped on it, which indicates somehow or other that logging is going on in the area of Mt. McKinley and Wonder Lake, which is totally false.

□ 1000

That is a national park. There is no logging going on there.

The next picture is entitled "Mismanagement and Waste in the Tongass," and it talks about logging the 800-year old Sitka spruce and hemlock trees in a rain forest. As a matter of fact, those are photographs of redwood logs from California on trucks on a California highway. To assert that that is logging, again, in the Tongass National Forest is absolutely false.

If you look at the rest of it, you will find that there are photographs talking about stopping the cutting of timber, which is critical to wildlife, and there are pictures of moose and caribou. There are no caribou in southeastern Alaska in the Tongass forest at all. There are about, I think, some 100 moose in all of southeastern Alaska and they are not in the area that logging takes place in the Tongass National Forest.

The impact of this appeal to the public and appeal to Congress to stop logging in the area that is still designated for logging within the Tongass National Forest on behalf of this national organization—again, Mr. President, using subsidized mail to send it all, subsidized by the taxpayers at a nonprofit rate, an appeal for money, sending out false assertions—I think is the most blatant thing that I have seen so far in this overall battle with this national organization.

I appeal to Members of Congress who get this brochure to look at it and realize that you are not seeing pictures of southeastern Alaska's forests at all; you are seeing photographs of the national parks in Alaska in which there is no logging. You are seeing photographs of caribou which generally reside in the northern part of Alaska. Certainly none of them are in the Tongass National Forest.

I have made statements before about the use of nonprofit mailing rates to raise money to lobby. That is what this is. This is another example of a total abuse of the rates that were set up for the Boy Scouts, the Girl Scouts, the Red Cross, and other charitable organizations, who perform very wonderful services for our country; then to have the Wilderness Society take a nonprofit rate and send out an appeal for funds to lobby Congress to change the designation of those areas that are set aside for logging in the Tongass National Forest—at least those that are not reserved for national purposes.

Mr. President, we do not know how to combat this sort of thing. It is difficult, if not impossible, representing a State that is 4,500 miles away, to try to have our voices heard in response to national organizations like this that flood the mails with propaganda that is false. I call upon the leaders of the Wilderness Society to come forward and explain why they are sending out to the public and particularly to Congress a brochure which contains these false representations and false assertions concerning our State.

Mr. President, I would like to have this printed in the RECORD, but unfortunately, the RECORD does not print photographs. The falsity in this is in fact in the designation of the photographs.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. What is the pending business?

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time allocated to morning business has expired.

TAX REFORM ACT OF 1986

The PRESIDING OFFICER. The clerk will state the unfinished business.

The assistant legislative clerk read as follows:

A bill (H.R. 3838) to reform the internal revenue laws of the United States.

The Senate resumed consideration of the bill.

Mr. DOLE. The pending business is tax reform. I understand Senator PACKWOOD is on his way, Senator LONG will be here in about 5 minutes. In the meantime, I yield to the junior Senator from Alaska 5 minutes.

Mr. MURKOWSKI. Mr. President, I thank the distinguished majority leader for yielding me 5 minutes to go into my special order.

RECOGNITION OF SENATOR MURKOWSKI

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. I thank the Chair.

THE TONGASS NATIONAL FOREST

Mr. MURKOWSKI. Mr. President, I commend Alaska's senior Senator [Mr. STEVENS] for pointing out vividly the misinformation contained in the Wilderness Society's most recent brochure concerning the Tongass National Forest. These pictures certainly emphasize how much misinformation there is on the issue. It is indeed unfortunate that there is no reference to accuracy here nor reference to the reality that of 17 million acres of timberlands in the southeastern part of our State, approximately 12 million are in a wilderness or conservation status. There are only 5 million out of the 17 that are available for cutting. It is the plan of the environmental groups to maintain their effort to curtail any timber harvesting in that part of the State.

UNITED STATES-JAPANESE TRADE

Mr. MURKOWSKI. Mr. President, the purpose of my special order this morning is to continue the issue of United States-Japanese trade. As you know, our current trade deficit with Japan is approaching $50 billion, and we are seeing for the first time a deficit in the services areas. A deficit of up to $2 billion is anticipated. Services trade includes banking, insurance, construction, transportation, and professional services.

In the past 5 years, we have seen the Japanese Government make six different proposals to address the trade imbalance, but the problems have gotten worse. My Foreign Relations Subcommittee on East Asia and Pacific Affairs has held hearings, and we heard shocking testimony about our inability to gain access to Japanese markets in banking, insurance, securities, and so forth. We have discussed solutions earlier. I believe, Mr. President, we must initiate an effective strategy. I suggest the following.

One, we must decouple Japanese Government and industry. Until we do this, even our large corporate giants will be overwhelmed by the powerhouse Japanese Government which provides endless protection for Japan's firms. We must have consistency and accountability in our own policies. We must maintain this consistency in dealing with our friends from Japan. We have various agencies involved—the Executive Office, State Department, Commerce Department, our Special Trade Representative. But when it comes to accountability, Mr. President, that is hard to find under our current policy.

Our policy needs to focus on outcomes. We need to determine specifically, whether the results satisfy frustrations of U.S. businesses and work-

ers—whether there's success to our efforts. I think we can achieve these goals with a straightforward and basic three-step philosophy.

First, we must aggressively apply the rules that are now on the trade books. The complex and arcane world of U.S. trade law has a rule for virtually every problem, but we have to enforce them.

Second, we have to expand the rules to cover countries and areas not covered now. Those rules must include the service industries, which are not covered under GATT.

Third, we must convert our market resources into bargaining leverage. Let me give an example.

For years, we have imported cars from Japan. We are the largest customer for Japanese manufactured goods. It is appropriate, Mr. President, that a portion of those cars go in ships that involve American labor. We have been able to leverage this recently, and now there are four ships being built and, although these ships are being built in Japan, they will employ American seamen.

□ 1010

Basically, we have used the leverage that we get from our market power. To keep the U.S. market for its cars, Japan must allow us to participate in the carriage of those automobiles. We have other items that we can leverage, Mr. President. Look at the fisheries of our north Pacific coast. Japan continually comes in and requests allocations of bottom fish. These allocations, Mr. President, should be based on the willingness of Japan to give us market access.

We have seen the effort to export Alaskan oil. That is an item of leverage as well. Japan and other East Asian countries crave a long-term supply of oil. We can leverage this demand into market access for a range of manufactured goods and services.

Another thing, Mr. President, that we can do with our neigbors in Japan is to encourage them to buy other raw materials from North America, particularly the United States. Each year they buy more coal from Canada, less from the United States, yet we are their very best customer. They continue to have unlimited market access, yet we have limited access to the Japanese markets.

Mr. President, we must not forget that we exercise power through what we consume as well as what we produce. As I have said, we are the largest free market in the world. That is our most potent weapon in the battle to gain market equity. It is time to change our market approach. We must send a clear and unmistakable message to our trading partners. If you want to prosper through access to U.S. markets, you must remove your trade barriers to U.S. goods and services.

Mr. President, I am not ready to surrender to the calls of protectionism. I want to make that very clear. This is a weapon of last resort that is sure to invite retaliation. We have the power to open the doors of the Japanese markets and those of our other friends in Asia, and we must initiate these changes. We can only do it through consistency and a very, very clear message which demands openness and fairness.

Mr. President, I thank the majority leader for yielding me time so that I might make my statement this morning.

HOUSE ACTION ON CONTRA AID

HOUSE FINALLY TO ACT

Mr. DOLE. Mr. President, next week at last—at long, long last—the Speaker of the House will keep his promise and let the House vote on an aid package for the democratic resistance in Nicaragua, the so-called Contras. At least that is what the Speaker is saying this week.

ONE MORE CHANCE FOR THE SANDINISTAS

Those of us with long memories recall that the Speaker made his commitment to have this vote as part of a last ditch effort to block House approval of an aid package back in April. The argument then was: Let's give the peace process—the Contadora process—time to work. Let's not play the Contra card if we don't need to. That was April.

And let us remember that plea was made in the face of what to most people was already a clear-cut record of Nicaraguan treachery—a record of Nicaraguan invasions of its neighbors; a record of Sandinista scuttling of one peace effort after another; a record of Managua stonewalling each time we tried to engage in direct, serious negotiations; a record of closer and closer ties between Ortega's government and its mentors in Moscow and Havana.

Our President's critics said:

> But set that aside, let's give Ortega and his crowd one more chance. Let's give peace one more chance. And if it doesn't work—if the Sandinistas don't respond to our concerns—then we'll admit the facts; we'll rally behind you, Mr. President; we'll acknowledge that we have to support the Contras as the only avenue left open to try to achieve our legitimate goals in Latin America.

That is what the President's critics said then.

Well, we have given the peace process yet another chance to work. We have had another intensive round of negotiations, and we have had a new deadline for the signature of an agreement—that was June 6. And we have also had the standard charges from the President's opponents that somehow it is Ronald Reagan who is the bad guy; it is President Reagan who does not really want a peace agreement; it is our President who is trying to block it.

MORE MONTHS OF SANDINISTA TREACHERY

Those are the charges. But what are the facts?

The facts are that, just like so many times before, it is the Sandinista who torpedoed the peace process. It is the Sandinistas leadership that refused to sign any kind of workable document dealing with the real threat in Central America—the threat of Nicaragua's virtual alliance with Moscow and Havana. Its reckless military buildup; its aggression against its democratic neighbors; and its support for subversion throughout the region. It is Daniel Ortega and his crowd who have used these months that we have given them, not to pursue a negotiated peace but to accelerate their military strength and lay the groundwork for new aggressions in the hemisphere.

And now we have the latest two bits of news. Yet another shipment of Russian arms arrives in Nicaragua, and the Soviets are flying planes around the country on reconnaissance missions, helping the Sandinistas put down the activities of the democratic resistance.

PATIENCE, PEACE, AND A TIME FOR DECISION

Mr. President, patience is great. We have gotten very good at showing our patience with Nicaragua's evils and Ortega's lies.

Peace is great, too. We are all for it. The President is for it. The democracies of Central America are for it. And the Contadora countries are still trying to find a way to peace, no matter how many roadblocks Ortega puts in their way.

Now there is only one missing piece in the puzzle, only one player in the drama who does not seem to want peace.

Next week the House is going to have a chance—at least I hope they are—to send one of two messages to the Managua regime.

It can send the message that, yes, once again we are going to reward the Sandinistas for their attacks against their neighbors, their military buildup, their alliance with the Soviet Union and Cuba and their suppression of freedom at home. We are going to give them yet another "one more chance." We are going to give them more time to build up militarily and crack down politically. We are going to turn our backs on Ronald Reagan, and put our hopes on the good intentions of Daniel Ortega.

Or the House can send a different kind of message. A message of American unity, unity behind the President, unity in support of democracy in Central America, unity behind the concept that the Nicaraguan people deserve liberty, no less than the other people of this hemisphere.

The House has delayed much too long its decision on what kind of message it wants to send. It is time for the Speaker, the leadership, and all the Members of the House to stand up and be counted.

TAX REFORM ACT OF 1986

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, I understand there is an amendment ready to be laid down. We are on the tax bill. I would again congratulate the managers of the bill and indicate to them we have now considered the bill for 10 days, we have consumed 73 hours and 41 minutes, we have had 15 rollcall votes, 36 amendments, 17 were agreed to, 2 were rejected, 11 were tabled, 5 were withdrawn, and 1 was a committee substitute, which is pending.

I do not really see any reason for any unanimous-consent agreement. It is ridiculous. We were up to 75 amendments. So why have an agreement. Why not have 200 amendments.

Mr. PACKWOOD. Eighty-three.

Mr. DOLE. Eight-three; eight more since 10 of 10, so there really is not any reason to have any agreement. I think we will just stay here and we stay here and we stay here all weekend if necessary to whittle down this pile of amendments and see how many Members really want to offer amendments. Otherwise, if we enter into this time agreement, we will be on this bill after the recess, or we will not have a recess, one or the other.

AMENDMENT NO. 2104

(Purpose: To allow a taxpayer to deduct 60 percent of that portion of the taxpayer's State and local sales taxes in excess of the taxpayer's State and local income taxes, to require a TIN for certain minors, and to modify the hedging exception for certain dealers)

The PRESIDING OFFICER. The Senator from Washington.

Mr. EVANS. Mr. President, I send an amendment to the desk on my behalf and on behalf of Senators ABDNOR, GRAMM, CHILES, GORTON, PRESSLER, SASSER, DODD, and JOHNSTON and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Washington [Mr. EVANS] for himself, Mr. ABDNOR, Mr. GRAMM, Mr. CHILES, Mr. PRESSLER, Mr. SASSER, Mr. DODD, and Mr. JOHNSTON, proposes an amendment numbered 2104.

Mr. EVANS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1415, beginning with line 10, strike out all through page 1416, line 4, and insert:

SEC. 135. DEDUCTION FOR STATE AND LOCAL SALES TAX.

(a) IN GENERAL.—Paragraph (4) of section 164(a) (relating to deduction for taxes) is amended to read as follows:

"(4) 60 percent of the excess (if any) of—

"(A) State and local general sales taxes paid or accrued by the taxpayer during the taxable year, over

"(B) State and local income taxes paid or accrued by the taxpayer during the taxable year."

(b) SPECIAL RULE FOR TAXES IN CONNECTION WITH ACQUISITION OR DISPOSITION OF PROPERTY.—Section 164(b) (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(6) CERTAIN NONDEDUCTIBLE TAXES.—In the case of any tax which is paid or accrued by the taxpayer in connection with the acquisition or disposition of any property and with respect to which no deduction is allowed under this chapter, such tax shall—

"(A) in the case of the acquisition of property, be included in the basis of such property, and

"(B) in the case of the disposition of property, allowable as a deduction in computing the amount realized on such disposition."

On page 1589, between lines 8 and 9, insert:

SEC. 423. EXCEPTION OF CERTAIN DEALERS FROM THE HEDGING TRANSACTION EXCEPTION.

(a) IN GENERAL.—Section 1256(e) (relating to mark to market not to apply to hedging transactions) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR DEALERS.—Paragraph (1) shall not apply to any transaction entered into by a dealer, other than a dealer in agricultural or horticultural commodities (except trees which do not bear fruit or nuts)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to positions established after December 31, 1986.

At the appropriate place in title V, insert the following new section:

SEC. . TINS REQUIRED FOR DEPENDENTS CLAIMED ON TAX RETURNS.

(a) IN GENERAL.—Section 6109 (relating to identifying numbers) is amended by adding at the end thereof the following new subsection:

"(e) FURNISHING NUMBER FOR CERTAIN DEPENDENTS.—Any person making a return in which is claimed a dependent (as defined in section 152) who has attained the age of 5 years shall include in such return such identifying number as may be prescribed for securing proper identification of such dependent."

(b) PENALTY FOR FAILURE TO SUPPLY TIN.—Section 6676 (relating to failure to supply identifying numbers) is amended by adding at the end thereof the following new subsection:

(e) PENALTY FOR FAILURE TO SUPPLY TIN OF DEPENDENT.—If any person required under section 6109(e) to include the TIN of any dependent in his return fails to comply with such requirement, such person shall, unless it is shown that such failure is due to reasonable cause and not willful neglect, pay a penalty of $5 for each such failure.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

SALES TAX DEDUCTIBILITY

Mr. EVANS. Mr. President, in our drive to simplify our Federal tax system, we have discriminated against many States by denying citizens the right to deduct their State and local sales taxes. This discrimination most greatly impacts Washington, Wyoming, Tennessee, South Dakota, Nevada, Texas, Alaska, Florida, and Louisiana. But it exists in virtually every other State in the Nation.

I rise to offer an amendment for myself and Senators GORTON, ABDNOR, GRAMM, CHILES, PRESSLER, SASSER, and DODD to help cushion this inequity. This amendment allows an individual taxpayer to deduct 60 percent of State and local sales taxes paid in excess of State and local income tax. This ensures that property and income tax will remain fully deductible, but will also provide some relief to citizens of States that rely heavily on sales taxes.

Mr. President, I wish to offer my sincere appreciation to Chairman PACKWOOD, Senator LONG, and other members of the Finance Committee in their willingness to fashion this compromise amendment. From my perspective, this is the most significant improvement to the tax bill during its consideration on the Senate floor. And I might add that $2 billion is not expensive when dealing with equity between States and paying for it by increased compliance and closed loopholes.

I had withdrawn my previous amendment in search for a more suitable source of revenue—and we have found it. The revenue offset comes from two sources:

First, 85 percent of the revenue comes from increased compliance ensuring the validity of dependents claimed on tax returns. Those taxpayers claiming a dependent must display on their return an identifying number verifying the deduction.

Second, the remaining revenue is raised by modifying the so-called hedging exception which allows dealers in certain stocks, bonds, and metals, for example, gold—to indefinitely delay the payment of taxes by constantly offsetting any gains they have by losses in the same kind of property. In other words, dealers would be treated like all other investors—losses on a property could only be taken when gains are actually realized on the same property.

Mr. President, I have shared the responsibility of keeping this tax reform bill from being carelessly amended. However, we have devised this amendment which corrects a terrible inequity. We have corrected this gross inequity without doing damage to any portion of this bill or elements which many so rightly wish to protect.

While this amendment does not fully restore the sales tax deduction,

an option I prefer, it does provide relief to those States most severely and inequitably impacted.

This amendment, coupled with assurances from Chairman PACKWOOD that he will do his utmost to see that any vestiges of discriminatory treatment between types of State and local taxes eligible for deduction are removed in conference with the House, gives me a renewed optimism that full deductibility will be the end result.

We started 2 weeks ago seeking 86 percent deductibility of sales tax. Today, we can deduct 60 percent of sales tax with a strong likelihood of 100 percent coming from conference.

Mr. President, the action taken by the Senate this morning represents a large step forward in making a good tax bill that much better. This is clearly a victory for the States and reaffirms Alexis de Tocqueville's summary of the U.S. Constitution to which I wholeheartedly agree,

"Division of authority between the Federal Government and the States—the government of the States is the rule; the Federal Government the exception."

Mr. President, I hope we can promptly move ahead on what I believe to be an appropriate and acceptable amendment.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I think this is a good amendment. I am delighted we can move part way toward helping to solve this sales tax problem. I think the method of funding is fair. From my standpoint, I am prepared to accept it. I know Senator LONG will soon be here. I hope we would very expeditiously handle this amendment.

□ 1020

Mr. GRAMM. Mr. President, I want to thank our distinguished colleague, the chairman of the Finance Committee, for accepting the amendment and for working with us in such good faith on this problem.

This amendment at least partially rectifies one of the great inequities of this bill—in fact, the only real inequity left in the bill—and that inequity comes from the fact that if you pay property taxes at the State or local level, if you pay income taxes at the State or local level, you can deduct those taxes from your income tax; but if you pay sales tax, you cannot.

What we have here is a provision at the State and local level. I think it is a move toward equity and strengthens our position in conference. I hope we will ultimately get full deductibility, where we treat sales taxes like income taxes and property taxes.

We gain the revenue to make this improvement in two simple ways. No. 1, we require people who are listing deductions in terms of dependents to give the Social Security number of those dependents so that we are sure the same number is not claimed twice. That is the enforcement aspect. Second, we modify a provision in the Tax Code known as the "hedging transaction exception" to ensure that the loss and gain are brought together and claimed at once. I think these are both important compliance procedures.

I again thank my colleague, the distinguished chairman of the committee, for helping us deal with a problem that faces the States that do not have income taxes but have sales taxes and recognizes the principle, as old as the Republic, that it is not the duty of the Federal Government to pick and choose among State and local revenue sources.

Mr. GORTON. Mr. President, I join my colleague from Washington and my colleague from Texas in advocating the adoption of this amendment. I thank the distinguished chairman of the Finance Committee, our neighbor, for his understanding.

I do want to put on the record, in connection with the condition of the bill as it came from the committee, that the discrimination which has been keenly felt by our States was not the work of the distinguished chairman of the Finance Committee, whose position has been all along that there should not be discrimination.

Mr. PACKWOOD. I thank my good friend. As he is aware, I started out with a provision that had no discrimination, and I tried to sell that to the committee, and it did not work. I am glad this amendment helps alleviate that.

I hope that in conference we can go the full way toward eliminating any discrimination between the different methods of taxation that the States use to raise their revenues.

Mr. GORTON. It is exactly those sentiments that I wanted to make sure appear in the RECORD. My full understanding is that this was not something the Senator from Oregon was trying to pull off and to victimize others.

It is the most important single issue in this entire bill with respect to those States which are totally or primarily sales tax States. Getting 60 percent of what we started out to gain at this time is an immense triumph for justice and for fair dealing and for our constituents.

I cannot say how profoundly grateful I am to the Senator from Oregon for his understanding and his willingness to work with us on this subject.

Mr. President, I am tremendously pleased by the action taken here today with regard to the deductibility of State and local sales taxes. This body has taken a significant step toward resolving the single most unjustifiable provision in the Senate Finance Committee tax reform bill by allowing individuals to deduct 60 percent of the amount by which their State and local sales taxes exceed their income taxes.

The committee bill would have repealed the sales tax deduction entirely, while preserving the deduction for other State and local taxes—most importantly, income taxes. This would have grossly violated the principle of federalism by injecting the influence of the Federal Government—through the Federal Tax Code—into the tax structures of State and local governments throughout the country. Many, if not all, of the Members of this body recognize and object to such an invasion of States rights, including the distinguished chairman himself, and I am confident that there will be general agreement, therefore, that this action improves the bill tremendously.

The issue of the deductibility of State and local taxes in tax reform was first raised by the Treasury Department's initial tax reform proposal. This proposal would have repealed the deductibility of all State and local taxes, across the board. While many considered this proposal unacceptable, it was, nevertheless, fundamentally fair to the 50 States. It did not treat different types of State and local taxes unevenly—it did not discriminate arbitrarily among them. It is largely for this reason that my distinguished colleague and good friend, Senator EVANS, and I, along with a bipartisan group of Senators, have worked so hard to ensure that all State and local taxes be treated equally.

This fundamental fairness argument is one reason—an overwhelming reason—for retaining the deductibility of State and local sales taxes. There are also others. The sales tax deduction is the most popular deduction in the Tax Code. It was claimed on 33.5 million returns in 1983, more than the deductions for charitable contributions, property taxes, income taxes, and home mortgage interest. Moreover, the deduction is of vital importance in easing the financial burden of providing important State and local government services, most notably law enforcement and education. Finally, the repeal of the sales tax deduction alone would almost certainly have generated far less revenue for the Treasury than is currently estimated had States shifted to still-deductible income, property, and business taxes as a result.

The action we have taken tonight does not completely restore fairness, unfortunately, but we are assured by the chairman of the Finance Committee that he and the other conferees will do their utmost in working toward preserving a conference report that is completely nondiscriminatory in this

respect. I believe this is essential if we are to avoid picking, in an arbitrary fashion, winners and losers among the States, and I thank the Senator for his efforts and assurance on the issue.

Mr. GORTON. I thank the Senator for his amendment and the explanation. As the Senator knows, the discriminatory fashion in which the committee bill treats State sales taxes has been my principal concern with this bill from the start. I am glad to see that we are taking a step in the direction of rectifying that. This amendment, by partially restoring the sales tax deduction, is a step in the right direction, and I support it.

I still believe, however, that even with this amendment we will not have a completely fair situation. Those States which rely relatively heavily on the sales tax will still be disadvantaged in comparison to those which rely relatively heavily on the income tax. My State, which has no income tax at all, in an extreme example of this. I would hate to see the bill come back from conference with this same problem.

What assurances can the chairman of the Finance Committee give that I will not be faced with such a situation in the conference report?

Mr. PACKWOOD. I can assure the Senator from Washington that I will do my utmost to see that any vestiges of discriminatory treatment are removed in conference.

I intend to go into conference with the position that, whatever final agreement we reach, it will not treat sales taxes differently from income taxes with respect to deductibility; and that the residents of States which rely on the sales tax revenues will have all of the deductibility benefits which accrue to other types of taxes. I will make this my highest priority in conference.

Mr. GORTON. I thank the Senator.

Mr. LONG. I believe this is the amendment the chairman showed me. Is that correct?

The Senator nods, so that is correct.

Mr. President, if the chairman wants to go along with this amendment, I am willing to do so. I must explain, however, that this amendment does not do anything for Louisiana, because Louisiana raises its money from mainly two tax sources—an income tax and a sales tax. We have very little property tax. Accordingly, the tradeoff in the amendment really does not do much to help us with our problem.

If we accept the amendment, I hope that when we go to conference, the chairman of the committee and those who think as he does will be conciliatory, and try to consider the problem of some of us who do not receive much out of this amendment. I hope that the chairman will try to make it work out as suggested a few moments ago, toward complete tax neutrality.

I can understand that the bill might raise some money in the sales tax deduction area. On the other hand, we in Louisiana, like other States, while we are willing to cooperate, do not want to pay more than our share. I hope the chairman will work it out in conference so that it will be that way.

Mr. ABDNOR. Mr. President, I want to commend the Senator from Washington and the Senator from Texas for the effort they have put forth in this amendment and their insistence in making sure that it came about.

I am delighted to have had a small part in it, in working with them.

I do not want to talk a good thing to death. I know a good thing when I see it, but the very inequity we spoke of all along has now come a step toward being a much fairer measure for all.

I say to the Senator from Louisiana, who has been kind enough to accept this amendment, that the only way some States have to raise revenue to run government is through a sales tax. If we are not able to have some kind of deduction for that, I guess we are dictating to the States how they should go about raising their revenue.

This means a great deal to my State, which would have nothing otherwise as a deduction for running the government. I am sure the Senator from Louisiana would not want that.

Mr. President, ever since introduction of H.R. 3838, Members adversely affected by the sales tax provision in the bill have been working diligently to arrive at a compromise on this issue. The tax bases of the States adversely affected by H.R. 3838 are so diverse that it was not easy forging an acceptable middle ground. However, in the spirit of compromise, we have developed a solution which I believe addresses to some extent the problems each of our States has with the sales tax deductibility provision of H.R. 3838.

Mr. President, while I must admit that I much preferred the solution which we discussed on the floor of the Senate Thursday evening of last week, I am willing to support and cosponsor this compromise in hopes that the distinguished Finance Committee chairman will be able to improve upon this amendment in conference with the House. I still insist that it is grossly unfair to States like South Dakota which have no income tax and rely exclusively on sales tax to run government that the deduction for this tax be even partially disallowed. But I guess this is the best we can do for now.

The people of South Dakota happen to have chosen the sales tax as a means to raise revenue, to run State and local governments. It has worked, and it is consistent. It is not up and down, like it would be if we tried an income tax.

The average sales tax deduction for South Dakota's itemizing taxpayers in 1985 amounted to $505. And it has been estimated that loss of the sales tax deduction would cost South Dakota taxpayers approximately $17 to $20 million. That probably does not sound like a lot of money in most States but I assure you that in South Dakota it is. I do not think you can single out South Dakota taxpayers and tell them you cannot take this deduction, and, even more fundamentally than that, that you cannot raise your revenue and run your government this way.

Mr. President, our amendment would restore 60 percent of the deduction for State sales tax. The price tag on this amendment is $2 billion, considerably less than previous approaches to the problem.

My concern is for a level playing field. I do not believe taxpayers in States such as South Dakota should be penalized for their geographic location. The legislation we send to the President, whether a result of floor action or conference, should establish equity across all State boundaries, and I encourage the distinguished chairman to do his best to ensure that full sales tax deductibility be retained.

I thank the chairman and the minority member of the committee for accepting this amendment.

The PRESIDING OFFICER. Is there further debate?

Mr. LONG. Mr. President, I believe there are three Senators on this side of the aisle who would like to come to the Chamber and take a close look at the amendment before we vote on it. I expect to vote for the amendment. In order to protect their rights, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, in addition to thanking Senator GORTON for everything he did to call this to our attention, I want to emphasize the work that Senator ABDNOR did in helping us work out a solution to this problem. He has been diligent in calling this to my attention day after day and hour after hour. He has definitely watched out for the interests of his State, and he is to be commended.

Mr. CHAFEE. Mr. President, having been in on part of the negotiations for this sales tax amendment, I should like to say that no group of Senators could have worked harder to represent their States than Senators GORTON, EVANS, ABDNOR, and GRAMM.

I particularly want to call attention to the work that Senator ABDNOR did. He was extremely persistent in fostering this, and I think great credit goes to him, along with Senators GORTON, EVANS, GRAMM, and others.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call theroll.

□ 1030

Mr. MOYNIHAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I rise in support of the amendment that has been submitted by the Senators from Washington, South Dakota, Florida, Texas, and Connecticut.

I see the distinguished junior Senator from Washington is on the floor. If I could have his attention, I would like to clarify a few points about this amendment.

This amendment preserves intact the Finance Committee's decision that the deduction for State property taxes and local property taxes shall remain inviolate.

Mr. GORTON. Mr. President, if the Senator will yield, he is entirely correct.

Mr. MOYNIHAN. And that this amendment likewise preserves the inviolability of the deduction of State and local income taxes, which is a principle already in the bill.

Mr. GORTON. The Senator is correct.

Mr. MOYNIHAN. Then, for those States where sales taxes are higher than income taxes or where there may be no income tax, it permits a deduction of 60 percent of the sales tax.

Mr. GORTON. The Senator is not quite correct. The remainder of the remarks are correct.

Mr. MOYNIHAN. The excess above where there is 60 percent.

Mr. GORTON. Exactly. It is not so much the sales tax of the State is higher. It is something which is exercised by each individual taxpayer. They simply get 60 percent of the excess of the sales tax payments over his income tax payments, if any.

Mr. MOYNIHAN. And where there is none, then 60 percent of the sales tax.

Mr. GORTON. The Senator is correct.

Mr. MOYNIHAN. It is my understanding that part of the revenue for this amendment is raised by addressing an interesting aspect of our society, if not our Tax Code; namely, the growing practice of separated or divorced parents both claiming the children of the marriage as dependents. The amendment requires that the Social Security number of dependent children 5 years or older be filed on the tax return on which they are claimed as dependents. This attends to a compliance problem where there are separated or divorced parents, each of whom may be taking the dependents' exemption; is that the case?

Mr. GORTON. The Senator is correct as is the case where it is approximately 80 percent.

Mr. MOYNIHAN. And then another feature is with respect to the hedging exemption in commodities trading——

Mr. GORTON. That is correct.

Mr. MOYNIHAN [continuing]. Which is a matter about which many will have reservations.

If I can address the chairman and the ranking member, it appears to me that we have worked this out through reason and without shouting at an early morning hour, as compared to many other proposals. We seem to have worked out a very credible and sensible measure, which advances our goal of preserving the full deduction for all State and local taxes—income, property and sales. We brought this bill to the floor with 87 percent of our goal. I would think that with today's amendment we are now about 90 percent there. We have the remainder to do in the conference committee.

I believe this is an excellent measure, and I congratulate the Senators from Washington, the junior Senator from Texas, and the chairman, who have worked this out patiently and deliberately behind the scenes. Today with this positive advance, I have hopes.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. BRADLEY. Mr. President, let me also thank the distinguished Senators for their amendment.

Earlier they had proposed an amendment pertaining to the same subject. I thought there were problems of how they chose to pay for it. They managed now to pay for this amendment with increased compliance. I think it is a much better way to pay for it. They have also reduced the amount of deduction. I think that reduces the total cost.

Let me also say that I appreciate their willingness to work on this matter. Also on our side Senator CHILES has said how important this is to him on a daily basis, as well as Senator BENTSEN.

So I thank them as well as the distinguished Senators from Washington and Texas. I think this is a good amendment.

Mr. SASSER. Mr. President, a great deal of the debate on this tax reform package has centered on the issue of fairness. We are all interested in modifying the Tax Code to make it simpler. We have heard how the committee's package will give us a much fairer Tax Code. Yet, there is one glaring omission in this parade of fairness.

I am referring to the committee's proposal to eliminate the deduction for State sales taxes. The sales tax is the only State or local tax which is deemed not worthy of a deduction under the Finance Committee proposal. There is certainly nothing fair about this. Indeed, it is patently unfair to single out the sales tax deduction in this way.

This proposal is also unfair as it singles out for economic punishment those States which rely on sales taxes for much of their revenue. It is no secret that my home State of Tennessee would be hard hit by elimination of the sales tax deduction. Sales taxes account for 58 percent of all State revenues collected in Tennessee. Only one other State, Washington, gets a higher portion of its revenue from sales taxes.

Quite clearly, the sales tax deduction means much to Tennesseans. This deduction was worth $585 per itemizing household in Tennessee in 1985. And it is worth noting that the deduction for sales taxes is taken by more taxpayers than any other deduction. Some 33.5 million tax returns claimed the sales tax deduction in 1983.

If this deduction is repealed, Tennesseans will lose 48 percent of their total savings from the deduction allowed for State and local taxes. This is the third highest loss among all States. Individuals in States with no sales tax would not lose a dime's worth of value. Can the advocates of this proposal explain to me the equity of this situation?

My concerns over the elimination of the sales tax deduction are not simply parochial, Mr. President. This idea is not only bad news for Tennessee, it is bad public policy for America. Imposing a limit on a deduction for State taxes marks a substantial intrusion by the Federal Government into the fiscal integrity of State and local governments. Selective repeal such as contained in this bill is even more odious. Targeting only the sales tax deduction for elimination undermines the right of State and local governments to determine for themselves their sources of revenue.

Moreover, the Finance Committee proposal will result in imposing a tax upon a tax. When State sales taxes are paid by a family, that money is no longer available to a household. That money should no longer be considered part of a family's income. Yet, the committee's proposal abandons this time-honored principle. I urge my colleagues to think long and hard about abandoning this important concept.

This proposal is also bad public policy as it jeopardizes public education in many States. Sales tax revenues provide a major share of State funds for public education. Almost

half of Tennessee's sales tax revenues, 46 percent to be precise, go to support public education. Clearly, eliminating the State sales tax deduction will undermine educational advancement in Tennessee.

Finally, Mr. President, it is worth noting that the deduction for State sales taxes is not an abusive loophole crying out for reform. I can think of no one who would pay more in State sales taxes in order to shelter income from Federal taxation. These are not voluntary payments cleverly made to lower Federal tax liability. Sales taxes are compulsory payments. The sales tax is not the type of abuse tax reform should rightly focus on.

Mr. President, I urge my colleagues to join in our efforts to adopt this important amendment.

● Mr. DURENBERGER. Mr. President, I reluctantly rise in support of the amendment offered by my distinguished colleague from Washington. My reluctance is based on my belief that this amendment does not really address the basic issue that I hope will be resolved in conference. And that issue is whether the Federal Government should make distinctions between the various ways that our 50 States choose to finance the needs of their citizens.

There are three defects in this amendment that should not go unnoticed. First, it expresses the Federal Government's preference for State income, real property, and personal property taxes over sales taxes. I think that is wrong from an intergovernmental perspective, especially when we remember that the sales tax is the No. 1 revenue source for funding the State and local governments of the country.

Second, the relief provided by this amendment is skewed in favor of just a few States—those most reliant on sale taxes. It affords little or no benefit to the 35 States that spread their tax base more evenly between sales, income, real property, and personal property taxes. And I think that represents bad fiscal policy for State governments, for it discourages State governments from diversifying their tax base and instead encourages them to narrow that base.

Let me give you an example: This amendment will provide a clear and direct benefit to Texas and Washington which have no income taxes, but do have high sales taxes. However, for the citizens of Minnesota, which has a diversified tax base, there is no economic benefit gained by this amendment. That's because, my State relies more on income taxes than sales taxes, and therefore, it will be a very rare case where a citizen of Minnesota would pay more in sales tax than income taxes.

I also think it is bad fiscal policy to encourage States to narrow, instead of diversify, their tax base. As my colleagues in the hard-hit energy producing States of Louisiana and Texas are learning, overreliance on one type of tax—the severence tax on oil in their case—can cause a State fiscal disaster when economic conditions change. I do not believe that we in Washington, who set the worst example of fiscal irresponsibility, should be sending a signal to the States to narrow their tax bases and risk future budgetary imbalance. That's what this amendment does.

Mr. President, last week we passed a resolution directing the conferees to seek to restore the full deductibility of State sales taxes. I know that Chairman BOB PACKWOOD has grappled for months with the problem of finding a way to address the issue of State tax deductibility in a fair and equitable way. Having seen how the distinguished Senator from Oregon miraculously brought tax reform back from the brink, I am convinced that he will work his magic once again in conference and will ultimately find a way to resolve this issue that is fair to all States.

Finally, I must express my concern as to how the authors of this amendment propose to pay for partial restoration of the sales tax. The amendment would require that children age 4 or older register with the Social Security system and obtain a Social Security number in order for their parents to claim a dependent deduction for them. I recognize that this so-called "compliance" measure will deter people from claiming dependent deductions for phantom children.

However, I wonder if this will not be perceived by our Nation's citizens as just one more step in the direction of Big Brother government from Washington. Registering with Social Security has always been a right of passage for young people entering the work force for the first time. Receipt of the card has always meant that a citizen has joined the social insurance program and has become a contributor to that system, and an ultimate beneficiary of that system. Today, when the promise of a Social Security is severely in doubt for many of today's young workers, it seems ironic to require infants to sign up to help the IRS enforce the tax laws.

Yet by the action we take today if we adopt this amendment, a Social Security card is being transformed into a form of National Identity Card. In the past, there has been a heated debate as to whether it would infringe individual liberties and the right to privacy to institute a National Identity Card. Often the debate has centered around the problem of illegal aliens in the work force. So far, we have rejected the idea of instituting such an identification system.

Too often, in the name of complying with the tax laws, we have adopted laws which the public view as an unnecessary and unwarranted burden. Remember automobile recordkeeping rules and withholding on dividends and interest? I fear that the public clamor this provision could set off—especially among civil liberterians—may come back and force us to reconsider this decision.

I would suggest that my colleagues not dismiss this issue lightly.●

STATE SALES TAX DEDUCTION

Mrs. HAWKINS. Mr. President, I want to express my support for the Evans committee compromise obtained on the State sales tax deduction. I continue to believe however, that the merits of the case obligate the Senate conferees to press for the full 100-percent deduction rather than settling for a 60-percent deduction rate.

As Senate consideration of the reform proposal continues I would like to bring to the attention of my colleagues that the reduction of the State sales and local tax deductions is absolutely unfair. The Packwood proposal is revolutionary in its sweeping changes and it brings simplicity to our current Tax Code, but it should ensure fairness. By denying the full 100-percent deduction for the State sales tax many Floridians will be asked to sacrifice their deduction while other States with an income tax will still be able to keep their deduction. This provision hits Floridians especially hard, and it is discriminatory.

Over 50 percent of the revenues collected in Florida come from the sales tax. The sales tax is the primary source of funding for many of the Government services offered by the State. Millions of retirees residing in Florida depend on the sales tax deduction in caluclating their fixed pensions. By eliminating the sales tax a number of these people on fixed incomes will suddenly lose precious hundreds of dollars causing chaos to many of the States elderly.

Although I am a supporter of the Packwood proposal in general, I must assure Floridians that this provision to reduce the sales tax deduction will be addressed equitably by Senate conferees. Mr. EVANS and many of us fighting to retain the full 100-percent deduction must now settle for 60 percent sales deduction. Florida with no income tax is being penalized for running a tight financial revenue ship. States with lavish Tax Codes are rewarded, especially those with an income tax while Florida is forced to relinquish its main State tax deduction. This is not fair and I hope that the members of the Finance Committee see fit to correct this issue in conference committee action.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, later today I will be sending to the desk an amendment which I believe will be accepted and which we are working with the senior Senator from Texas on.

Mr. MOYNIHAN. Mr. President, will the Senator from Rhode Island yield?

Mr. CHAFEE. I am glad to yield.

Mr. MOYNIHAN. I wish to note that my distinguished friend and chairman of the Subcommittee on Water Resources, the Senator from South Dakota, was also a cosponsor of the amendment we had before us.

Mr. CHAFEE. Mr. President, I reinforce what was said about the Senator from South Dakota, Senator ABDNOR. He certainly worked hard on this prior amendment dealing with the sales tax.

COASTAL BARRIER RESOURCES

Mr. CHAFEE. Mr. President, as I mentioned, I will be sending later to the desk an amendment which I believe will be accepted. We are working with the senior Senator from Texas on it now.

During this interim, I thought I would explain briefly to the Senate what this amendment does.

This is an amendment that does not cost money, happily. Indeed, it yields the Treasury some $10 million over the 5-year period.

What it does is it would eliminate or reduce certain tax benefits that currently promote development on undeveloped barrier islands, beaches, and spits that comprise the coastal barrier resource system.

These areas, Mr. President, are dynamic beach systems with dune ridges just behind the beach, interior lowlands, and bayside wetlands. Barrier islands and beaches are so named because they create a barrier to protect the mainland and its associated aquatic systems which are rich in fish and wildlife. They have behind these beaches lagoons, estuaries, and marshes which are protected from the direct attack of the ocean waves, storms, and hurricanes. The barriers themselves provide essential habitat for fish and wildlife. Their beaches and associated aquatic areas are resting places for millions of migratory waterfowl, shorebirds, raptors, reptiles, amphibians, and small mammals that live in the ponds in back of the barrier beaches.

These coastal barriers also are highly unstable and highly susceptible to hurricanes and other storms of great force. Geologic processes are constantly eroding the physical composition of these areas, and man's efforts to stablize the islands' movements to protect what man has built, these protection devices, in addition to being almost hopeless, I might say, are extremely costly.

□ 1040

Because these valuable and unstable natural resources were being developed at an alarming rate, Congress established the coastal barrier resources system in 1982, just 4 years ago. And we passed that legislation to prevent the Federal Government from subsidizing the development of the undeveloped areas of beaches along the Atlantic and the gulf coast.

The 1982 Coastal Barrier Resources Act ended Federal spending for the development of 186 such areas encompassing some 670 miles of barrier beaches.

Let me briefly explain this, Mr. President. There are along the Atlantic coast and the gulf coast some 1,800 miles of these barrier islands and beaches. It roughly breaks down into a third of those beaches are almost developed. In other words, Atlantic City being a case in point. With all the buildings there, it is not wild barrier beach anymore.

In addition, there are about one-third of those islands that are under protection here.

Mr. President, because the managers of the bill as a whole have an amendment that they choose to accept and since this amendment I have deals with something in the future, I would yield now to the distinguished chairman of the Finance Committee.

AMENDMENT NO. 2104

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I know of no other objections to the amendment and I think we are ready to vote.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 2104) was agreed to.

Mr. MOYNIHAN. I move to reconsider the vote by which the amendment was agreed to.

Mr. GRAMM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PACKWOOD. I thank the Chair.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

COASTAL BARRIER RESOURCES

Mr. CHAFEE. Mr. President, as I was mentioning, there are about 1,800 miles of barrier beaches along the Atlantic and the gulf coasts. Of course, some 600-plus miles are already developed. So we cannot do anything about saving them. Some 600-plus miles are currently under protection of either the Fish and Wildlife Service, the Federal Government Park System, State and local park systems, or perhaps the Audubon Society, or something like that. There remains some 600-plus miles which are in private ownership which have not been developed. The objective of the act that we passed in 1982 was to preserve those remaining 600-plus miles to the extent we could.

Now if the Federal Government had the money, we would have bought those barrier beaches and islands that are undeveloped. But, unfortunately, we do not have that money.

So what we did was provide that the Federal Government would not subsidize the development of those barrier beaches. Now, how did we do this? We did it by saying no Federal money could be spent to build bridges, for example, to those barrier islands; or no Federal money could be spent to build highways on those barrier beaches or islands; or sewer systems. No Federal money except for very limited purposes, such as lifesaving equipment, could be spent on those barrier island beaches.

Mr. President, in addition, we had one other feature that was important. The Federal Government, which as you know is in the flood insurance business, would not provide any flood insurance for new structures built on those undeveloped beaches and islands. In addition, those buildings that are already on these undeveloped beaches and islands—in other words, in the undeveloped part, there are some houses, very few but some, and those houses, to a considerable degree, already have Federal Government flood insurance. What we did was to say that that flood insurance would remain in force but you only receive one bite from the apple. And if a storm should wash away your house, you could collect your flood insurance but not get more for future building.

Now that act was a great success and is a great success. It has served to protect these fragile high-hazard areas which serve the natural interests by conserving natural resources and wildlife as well as preserving human property and human life.

In addition, they save the American taxpayer literally millions of dollars which were going for disaster payments to those who did build houses on those beaches.

When we enacted that Coastal Barrier Resources System Act of 1982, there were at least 45 cosponsors of that legislation who are still in this Senate today. That shows the popularity of that act.

But, Mr. President, we left one Federal benefit untouched, and that is the tax benefits. And what we seek to do by the amendment that I will be sending to the desk later today, and hope it will be adopted and accepted by the leaders here, would close these remaining tax loopholes which would foster the development of the 186 units that remain on these coastal barrier beaches.

In other words, the 670 miles of undeveloped beach obviously is not contiguous. It is not a series of solid strips. There are sections here undeveloped and then developed and then another section is undeveloped. And there are some 186 of these separate units that have been delineated by the Department of the Interior.

The amendment which I will submit will not apply to any new areas that might be added to the coastal barrier system in the future years. In other words, we have a study ongoing by the Department of the Interior to see whether new sections could be added to the barrier beaches that we are now protecting. Some we might have missed when we did this 4 years ago. If additional sections are added to these beaches through recommendation of the Secretary of the Interior, those sections would have to be adopted by this Congress. And then, if we wanted to give them this tax protection that we are working on in this legislation, we would have to pass that separately, as well.

In other words, we are not extending these Tax Code provisions to sections that are not included in the beaches now.

The amendment would not eliminate deductions for ordinary and necessary business expenses that are incurred on these undeveloped areas. It would not eliminate the ability of businesses to recover their capital expenditures in a straight-line depreciation method. It would not limit deductions for interest or for State and local taxes for businesses in the designated area. Only the accelerated cost recovery—in other words, the accelerated depreciation—and other special tax incentives would be reduced or eliminated under this legislation.

This is what it would do. Our amendment would not allow preferential tax treatment for industrial development bonds to fund facilities located in or used on 186 units in the barrier islands system.

Currently, on these sections, State and local governments can now use tax-exempt development bonds to replace the Federal funds that were forbidden in 1982. These bonds are often the impetus to go from scattered low-density development to intensive high-rise development on these barrier beaches. Industrial development bonds or high-density development of these areas should not be given Federal tax preference.

What we are trying to do, in other words, Mr. President, is not have the Federal Government foster the development on these barrier islands and beaches that remain undeveloped. State and local Governments could continue to use tax-exempt development bonds for certain types of projects, such as repair or replacement, but not expansion of the State roads that exist there.

Our amendment would also eliminate casualty loss deductions for structures that are built or rebuilt after July 1, 1986.

□ 1050

If you build after July 1st of this year, you are on your own. You take your own risk, and if a storm washes away your building, you cannot deduct it as a casualty loss either on individual income tax or on your corporate tax. Private landowners can now deduct from their Federal income taxes the cost of storm and erosion damages which exceed 10 percent of their adjusted gross income. These are obvious Federal subsidies. We just do not think we should have a Federal subsidy to encourage the development on these beaches. The prospective removal of this deduction would place the burden of risk on new builders where it belongs. In other words, if they want to take a chance, that is their business, but the Federal Government should not stand behind them and pay for it in the indirect ways now as done under the income Tax Code.

The amendment, as I mentioned, eliminates within these coastal barrier beaches the undeveloped sections accelerated cost recovery, the exceptions to the at-risk rule, and expensing of depreciable assets. If a developer wants to depreciate this building, he can do so on the straight-line method, but not on the accelerated cost recovery.

Senator STAFFORD is a cosponsor with me and others on this piece of legislation. I hope that Senators who have been listening to this, viewing it, or have studied it will join with me in giving this further protection to these fragile barrier beaches, and islands which mean so much to the wildlife and to the recreation of millions of Americans.

Mr. President, I suggest the absence of a quorum.

Mr. LAUTENBERG. Mr. President, before we go into a quorum call——

The PRESIDING OFFICER. The Senator from New Jersey.

Will the Senator from Rhode Island withhold his quorum call?

Mr. CHAFEE. I will.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. I thank the Senator from Rhode Island.

AMENDMENT NO. 2105

(Purpose: To clarify that amounts paid for necessary home improvements to mitigate harmful levels of radon gas exposure qualify for the tax deduction for medical care expenses)

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 2105.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in title XVII, insert the following new section:

SEC. . HOME IMPROVEMENTS TO MITIGATE HARMFUL LEVELS OF RADON GAS EXPOSURE QUALIFY FOR MEDICAL CARE EXPENSE TAX DEDUCTION.

(a) FINDINGS.—The Congress finds that—

(1) indoor air contamination has become the focus of increasing concern among public health officials in the United States.

(2) the problem of harmful indoor radon gas contamination has been found in areas throughout the United States and has been estimated by the Federal Centers for Disease control to be responsibile for as many as 5,000 to 30,000 lung cancer deaths annually in the United States,

(3) mitigation of harmful indoor radon gas exposure is necessary to protect the health of residents,

(4) mitigation of harmful indoor radon gas exposure prevents increased risk of lung cancer, and

(5) mitigation of harmful indoor radon gas exposure can be costly, imposing excessive financial burdens on homeowners.

(b) HOME IMPROVEMENTS TO MITIGATE HARM LEVELS OF RADON GAS EXPOSURE TREATED AS MEDICAL CARE EXPENSES.—For purposes of section 213(d)(1) of the Internal Revenue Code of 1954 (defining medical care) amounts paid for necessary home improvements to mitigate measured harmful levels of radon gas exposure shall be treated—

(1) as expenses paid for medical care, and

(2) in the same manner as amounts paid for other home improvements which qualify as expenses paid for medical care.

(c) EFFECTIVE DATE.—Subsection (b) shall apply to taxable years beginning after December 31, 1985.

Mr. LAUTENBERG. Mr. President, before describing my amendment, I want to applaud the work of my colleague from New Jersey, Senator BRADLEY, and the work of the chairman of Finance Committee, Senator PACKWOOD, and the ranking Democrat, Senator LONG. Were it not for their leadership and statesmanship, we would not be where we are today: On the brink of passing real tax reform for millions of Americans.

I applaud their work. But, I must say, I take special pleasure in the accomplishment of my colleague, Senator BRADLEY. Mr. President, Senator BRADLEY has been the conscience of this tax reform effort. It is his consistency of principle that has kept the effort on target. It is his persistence that has kept it going. He has received a great deal of credit for his work. And Mr. President, it is well deserved.

AMENDMENT DOES NOT ADDRESS BASIC PRINCIPLES OF BILL

Mr. President, I have discussed this amendment with my distinguished colleague from New Jersey, and the chairman of the committee. I do not intend to seek a vote on the amendment. But, I do want to take a few minutes of the Senate's time to discuss the amendment, and the important issue that it addresses.

Mr. President, the amendment I offer does not stray from the principles of reform. It does not add back a loophole that the committee closed. It does not raise rates that the bill lowers. It does not restore a credit that the bill repeals.

The amendment simply clarifies existing law—existing law on medical deductions. Under existing law, taxpayers can deduct medical care expenses. That is, expenses for the diagnosis, treatment, or prevention of disease. The bill preserves that deduction. It raises the floor, so a taxpayer must have medical expenses greater than 10 percent of adjusted gross income, instead of 5 percent.

But, the medical care deduction is retained. The committee made the judgment that substantial health-related expenses should be deductible. The Tax Code has been used to help Americans bear the cost of preventing and treating illness and disease. The Tax Code would continue to be so used.

My amendment would clarify what qualifies as a deductible medical care expense. It provides that necessary home improvement expenses, incurred to remove measurably harmful levels of cancer-causing radon gas, qualify as deductible medical expense.

Mr. President, I note that the bill already includes one clarification of medical deductions related to home improvements. The bill provides that capital expenses incurred to make a residence suitable for a handicapped person, are deductible. So, widening doorways for a person in a wheelchair would qualify. That clarification makes sense. I do not take issue with it.

I note that it is there so it is clear that the bill does address the scope of the medical deduction. My amendment does not break new ground. It does not open up an area that is beyond the limits of the bill.

THE RADON PROBLEM

Mr. President, the Environmental Protection Agency estimates that the residents of 1 million homes face the health threat of radon gas. Exposure to high levels of radon gas has been clearly linked to lung cancer.

Radon gas seeps up from the ground below. It comes from uranium deposits. Radon creeps up and gets trapped in a home. And when it gets trapped and accumulates, it threatens residents with an increased risk of lung cancer.

Of the roughly 1 million homes likely affected, many have not been identified. In fact, less than 1 percent have been identified. But, we do know that a good number of these homes are in Pennsylvania, New Jersey, and New York. They sit on a geological formation known as the Reading Prong.

But radon contamination is by no means a regional issue. Testing has shown elevated levels of radon in homes in 45 States, from California to Florida to Maine.

Radon has contaminated homes in the Pacific Northwest. That, I am certain, is a matter of concern to the chairman of the committee. In fact, concern in that area has prompted the Bonneville Power Administration to distribute radon monitors to homeowners in its service area.

Radon gas is measurable. The threat is measurable. Mr. President, there are radon gas exposure levels for uranium miners. Those levels are set so miners do not get lung cancer. The EPA and Center for Disease Control are working on advisory guidelines for homeowners. There are reliable instruments that measure radon gas. A homeowner can put one in place and measure the gas levels.

The CDC states that radon gas exposure is the No. 2 cause of lung cancer, second only to smoking. The threat of disease is real. These projections are not based on laboratory tests on rats. They are based on actual studies done on humans exposed to radon gas. These are sound scientific studies, which have been duplicated throughout the world. Radon contamination is dangerous. And it must be prevented.

And it can be prevented. Radon gas can be reduced in a home to safe levels. A homeowner can mitigate the threat by making certain improvements. In some cases, a ventilation system will do. In other cases, a more complex heat exchanger will do. On average, the EPA estimates that it will cost $1,500 per home to vent the radon gas, and to make homes safe.

Mr. President, that expense should qualify as a deductible medical expense.

STATUS OF CURRENT LAW

Mr. President, it is my position that under current law, radon mitigation expenses would in fact qualify as deductible medical expenses.

The law provides that home improvement expenses can be deducted, if they are incurred for the treatment, or prevention of disease. A person with a back ailment can deduct the cost of a swimming pool—if needed for rehabilitation. A person can deduct the cost of a device to flouridate their water—to prevent tooth decay. In one case, the IRS ruled that a homeowner could deduct the cost of stripping lead-based paint from the walls as high as a small child could reach. That was done to prevent lead poisoning.

□ 1100

It is reasonable to assume that if deductions are allowed in those cases, they should be allowed in the case of radon mitigation.

But, I must concede, there are no cases or rulings, directly on point. I have sought a clear statement from the IRS, but that has not been forthcoming. Taxpayers have no assurance that the IRS will not disallow deductions for home improvements.

That is why this amendment is necessary. It clarifies the law.

REVENUE ESTIMATE

Mr. President, because current law should cover these expenses, I would argue, there should be no revenue impact.

However, the counsel to the Joint Committee on Taxation disagrees. He asserts the law is extended. Based on his judgment, the committee estimates that this amendment would reduce revenues by $100 million over 5 years.

I do not accept that judgment. Certainly, no court should presume that this Senate accepts that judgment, simply because that estimate is made.

CONCLUSION

In sum, Mr. President, this amendment would clarify the law on medical deductions. It would let homeowners deduct the cost of removing the threat of lung cancer caused by radon gas. Roughly 1 million homeowners are affected. Clarifying the law is of critical importance to these homeowners. It is consistent with the basic policy of the medical care deduction. It will let taxpayers to bear substantial expenses necessary to treat or prevent disease or illness.

As I said, Mr. President, I do not intend to seek a vote on this amendment. I intend to introduce a free-standing bill today, incorporating this clarification. But, I did want to bring this to the attention of the Senate, and particularly to the attention of the chairman of the committee. I know my senior colleague, Senator BRADLEY, is well aware of the problem I have addressed. So, indeed, are my colleague from Maine, Senator MITCHELL, and my colleague from New York, Senator MOYNIHAN, who sit with me on the Environment and Public Works Committee.

The PRESIDING OFFICER (Mr. HECHT). The Senator from New Jersey.

Mr. BRADLEY. Mr. President, this issue burst upon the national scene in early 1970. Before that we did not care or think much about the environment. The result of the environmental movement was the enactment of a whole series of laws that dealt with cleaning up the pollution of our land—the Clean Air Act, the Clean Water Act,

the Solid Waste Disposal Act, and a number of other laws, the purposes of which were to clean up the environment.

Mr. President, the environment which these laws were aimed at was outside the home. It was the clearest, most vivid form of pollution—air, water, land.

The environmental problems of the 1980's and 1990's will be indoor pollution, indoor pollution that increasing amounts of research demonstrate is as serious a problem as some of the outdoor environmental problems that we faced in the 1970's. It is to the problem of indoor pollution that my distinguished colleague, Senator LAUTENBERG, addresses himself.

You cannot be a Senator from New Jersey, a Representative from New Jersey, a resident of New Jersey, and not have serious concern about the effect of radon gas on the health of the citizens of our State. It is a serious problem. It is a problem that has increased as we have come to know more about it.

I would like to salute my colleague, Senator LAUTENBERG, who has been a strong, strong advocate about trying to solve the problem of radon gas. He has exerted real leadership on the Environment and Public Works Committee, which is the committee which has jurisdiction over the environmental aspects of this issue. Now he comes to the Finance Committee with what I think is a meritorous suggestion. When you have a home which has radon gas there must be structural changes in that home if you are mitigating the effects of that radon gas. His suggestion to treat the correction of that problem as a medical deduction and allow that to be a medical deduction on the same grounds that you allow any present change to be a medical deduction, to me merits a very careful evaluation.

I hope that the chairman will be able to respond positively to both Senator LAUTENBERG's request and also the strong feeling that I have about the need to look at whether a medical deduction could not be expanded to take into consideration the threat of radon gas posed to our citizens. I might say not only in New Jersey, but increasingly, as we know more about radon, across this land.

I salute my colleague for bringing the issue before the Senate, and second his effort. I would say in my meetings across the State of New Jersey, this is a major concern to our people and I hope we will be able to resolve this issue in the near future.

Mr. PACKWOOD. Mr. President, both Senators from New Jersey bring forth very valid problems. When we think of medical costs, in most of our minds we probably never thought of radon gas coming into the problem. It never occurred to me until the Senators brought it to my attention. I can assure the Senators we will have hearings on this matter. We will have a great number of hearings involving Medicaid and Medicare, and this will be part of those hearings.

Mr. LAUTENBERG. I thank the distinguished chairman for his recognition of this problem and his promise of hearings. I also thank my senior colleague from New Jersey for recognizing this problem and thank him also for his leadership role in this matter, and his support continually on issues that we face in our State.

Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The Senator from Louisiana.

Mr. LONG. Mr. President, at this point I believe it would be well to put the Senate on notice of the attitude that we expect to take with regard to accepting amendments that have not been cleared on this side. If a Senator is seeking to clear an amendment, he should speak personally to the minority manager or, in his absence, to the acting manager who occupies the desk where I now stand. Prior to speaking to the manager, the Senator or his staff should provide a copy of the proposed amendment to the minority staff of the Finance Committee. That staff is at my side at this moment.

Mr. President, I just want to remind Senators of what the clearance process requires. The minority manager of the bill will be constrained to object to accepting amendments by unanimous consent when those amendments have not been properly cleared on this side. It is easy enough, if this side is willing to agree to it, to obtain clearance. It is necessary for Senators to understand, however, that if we are taken by surprise, we are going to object. If the amendment has been cleared and we think the amendment is meritorious, we will not object.

With that understanding, I hope Senators and their staffs will be on notice that we do not expect to consider amendments sight unseen, and when we do not know what they are.

Mr. DOLE. Mr. President, the Senator from Louisiana is exactly right. Every time a Member tells me that they have an amendment which has been cleared, I ask them, "Cleared with whom?"

□ 1110

They ought to clear it with the chairman, the ranking member, then clear it with the Commissioner. We have to serve the Commissioner, too.

Mr. LONG. Mr. President, I want to make it clear that when someone shows the Senator from Louisiana an amendment, speaking here for the minority on the Finance Committee, the Senator should not expect us to clear that because it might appeal to him. If there is somebody on the committee he thinks might object to it, he should notify them. If there is someone not on the committee that has reason to think might object to it, he should feel an obligation to notify them about the matter. As the Senator does on his side of the aisle, the minority leader, Mr. BYRD, would be inclined on our side of the aisle to run the hotline and invite all Senators to object if they want to object to the amendment before we agree to it.

My reason for doing this is to identify sponsors and supporters of the concept of encouraging the use of techniques of finance that broaden the base of ownership, and particularly those techniques which promote employee stock ownership. I am happy to report that 71 Senators have so identified themselves by joining with me as original cosponsors of this amendment and I invite others to do so if they so desire.

Mr. DOLE. Mr. President, the chairman will be here momentarily, but I think the thing we would like to have—we had all these winners last night. We have 90 of them here. Everybody wants to offer something; nobody is on the floor to offer an amendment. It seems to me we are going to have a bill or we are not going to have a bill. We are going to grind away and grind away. I hope Members on either side—I am not directing this at anybody. There are all kinds of amendments here, 80-some. We have disposed of one or two. I know the managers would like very much to keep grinding away. We have four or five pages of amendments.

I had hoped we would have people standing in line to offer their amendments.

EMPLOYEE STOCK OWNERSHIP PLANS

Mr. LONG. Mr. President, since the Senator makes that point, I have notified leadership on both sides of the aisle and I have discussed this matter with most individual Senators, that I would like to have a vote on what is in the committee amendments with regard to employee stock ownership.

The reason I say that is that employee stock ownership will be a contested item in the conference. The House seems to be looking in the opposite direction to the Senate. Both committees would raise revenue from employee stock ownership by cutting back on the tax credit provided for employee stock ownership plans, what we call the PAYSOP, the one-half of 1 percent of payroll that can be claimed as a credit against taxes when set aside for employees. In the Senate bill, I am told that the net gain in revenue would be $2.1 billion.

I would be happy to provide for the RECORD all the information that supports the committee position and the side that the Senator from Louisiana

takes. If someone wants to debate the other side, I put them on notice.

Aside from that, assuming there is no one who wishes to discuss the matter, the Senator from Louisiana will be ready to vote at any point.

Mr. DOLE. I think I am a cosponsor of that amendment or would like to be.

Mr. LONG. I am happy to have the Senator as a cosponsor.

Mr. DOLE. That would be a good idea. We should alert Members that we are having votes today and if they come on the Senate floor and we remind them if they have an amendment to offer, maybe we can stir up some business.

Mr. LONG. Just so Senators might know, I would like—if someone wants to object, then I shall withhold, but otherwise, I would like to ask unanimous consent that on the section of the bill dealing with employee stock ownership, sections 1271 through 1275, there be a rollcall vote ordered on those sections. That can be found from page 2173 to 2187 in the bill.

The PRESIDING OFFICER. Is there objection to dividing that part of the amendments out?

Without objection, it is so ordered.

Mr. LONG. I ask for the yeas and nays, Mr. President.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

Mr. LONG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1120

Mr. CHILES. Madam President, I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. HAWKINS). Without objection, it is so ordered.

Mr. CHILES. Madam President, I am delighted to see the Senate take the action it has this morning in regard to the sales tax amendment. The people from Florida have felt that this was a basic problem in the bill as it came out of committee. It allowed a deduction if you had a State income tax or for State property tax but did not allow a deduction if you were one of those States that was frugal enough you did not have to have a State income tax but you had a sales tax.

Florida collects over 50 percent of its money in taxes from a sales tax. We have in our constitution a prohibition against a State income tax, and we feel it should not be the policy of the Federal Government to say to the State and local governments how they should collect their local revenue, what tax is better than another.

Under the system of federalism, that certainly should be left to the States, but if you are going to discriminate in your tax policy and say you cannot have a credit, then you are trying to tell States what they should be doing.

We are delighted to see an amendment that allows a 60-percent credit. I wish it was 100 percent. I think it would be much fairer if it was 100 percent rather than 60 percent. But at this stage 60 percent is a lot better than nothing, and so compared to what we had, it is a step forward. I hope that it also helps our conferees recognize that we should not be discriminating, differentiating between taxes.

The House has no provision that prohibits the deduction for State sales tax, and I hope that the conference would come out that way. But this is a positive action on the part of the Senate. It is a recognition that those States which have their principal source of collection from the sales tax are entitled to be able to deduct that and from the standpoint of Florida it makes it a better bill and fairer to Florida.

As I say, I look forward to the final product allowing a 100-percent deduction because we should not be discriminated against as to whether or not we have a sales tax. But this is a positive step and I am delighted to see the Senate take it this morning.

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Madam President, recently I sent to Members of the Senate a letter inviting them to join in sponsoring a proposal to improve employee stock ownership plans [ESOP's] and to make them more broadly available to Americans. I would like to read my letter into the RECORD. It is rather brief.

DEAR COLLEAGUE: I am writing to invite you to join me in sponsoring a bill improving employee stock ownership plans (ESOPs). The provisions of this bill were approved by the Finance Committee as part of the tax reform bill soon to be considered by the Senate. The purpose of introducing the bill is to identify sponsors and supporters of the Committee-approved amendments which tend to advance the idea of broader ownership—and employee stock ownership in particular. By contrast, the House bill looks in the opposite direction—toward phasing out those provisions of tax law which would help workers to own a "piece of the action."

During the tax bill's consideration, it is my intention to call for a vote on the Committee's ESOP provisions. It is my hope that you will agree to join me in cosponsoring these improvements to the law and that I might count on your support when I bring this matter to a vote.

Attached is a summary explanation of the bill which, in addition to improving ESOPs, adds $2.1 billion to federal revenues over the FY 1987-1991 period.

As the tax reform bill will be considered by the Senate quite soon, I would be most grateful if you could provide a prompt response.

Please direct your response and questions to Jeff Gates, counsel to the Finance Committee (4-5315).

With every good wish, I am

Sincerely yours,

RUSSELL LONG.

Mr. President, let me just state that enclosed was a memo succinctly outlining the amendments:

ENCOURAGE SALES TO ESOPS AND REDUCE ESTATE TAXES

Allow an exclusion from an estate for 50 percent of the proceeds realized on an estate's sale of stock to an ESOP.

FACILITATE ESOP FINANCING

Permit a corporate deduction for dividends used to repay ESOP loans.

SIMPLIFY ESOP LENDING

Extend 50 percent bank interest exclusion to loans matched by contributions of stock to an ESOP; extend exclusion to loans by mutual funds.

ENCOURAGE EMPLOYEES TO INVEST IN THEIR COMPANY

Allow an additional $2,500 401(K) contribution provided the funds are invested in employer stock in an ESOP.

ENCOURAGE FUNDS TO BE RETAINED AS AN EMPLOYEE BENEFIT

Provide an exemption from the proposed 10 percent excise tax on pension plan asset reversions to the extent reversion amounts are transferred to an ESOP.

ESOPS AS A TECHNIQUE OF FINANCE

Exempt ESOP's from excise tax on early withdrawals from pension plans.

ADVANCE EXPIRATION OF TAX CREDIT ESOP'S

Advance the expiration date from December 31, 1987 to December 31, 1986.

□ 1130

Madam President, I ask unanimous consent to have printed in the RECORD further material explaining in detail how these particular provisions would work.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TECHNICAL AND CLARIFYING AMENDMENTS

ESOP ROLLOVER

Clarify that in the case where an employer has only one class of stock, the plan must sell at least 30 percent of total shares but need not sell more than 30 percent in order to qualify for the rollover. Companies with more than one class of stock would continue to be subject to a rule requiring sale of 30 percent of total value of all stock of the company unless the ESOP acquires 30 percent of the shares of each class of stock.

PUT OPTION FOR STOCK BONUS PLANS

Extend the ESOP put option requirement to stock bonus plans.

ESOP ALLOCATIONS

Amend the prohibited group definition in section 415(c)(6) to conform to the definition of highly compensated employee in the chairman's proposal.

DISTRIBUTIONS ON PLAN TERMINATION

Allow distributions upon termination of an ESOP or a 401(K) plan; alternatively,

allow shares to be sold and the proceeds transferred to another plan.

DISTRIBUTIONS AND FORM OF PAYMENT

Shorten the period over which distributions may be made and modify the put option rules.

INTENT OF CONGRESS

Add to the U.S. Code a statement of congressional intent similar to that adopted in the tax reform of 1976 stating: "The Congress has made clear its interest in encouraging employee stock ownership plans as a bold and innovative technique of finance for strengthening the free private enterprise system. The Congress intends that such plans be used in a wide variety of corporate financing transactions as a means of encouraging employers to include their employees as beneficiaries of such transactions. The Congress is deeply concerned that the objectives sought by this series of laws will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of employee stock ownership trusts and employers to take the necessary steps to utilize employee stock ownership plans in a wide variety of corporate transactions, and which otherwise impede the establishment and success of these plans".

EXPLANATION OF THE ESOP AMENDMENTS IN THE TAX REFORM ACT OF 1986

Encourage Sales to ESOP's and Reduce Estate Taxes.—The amendment allows an exclusion from an estate for 50 percent of the proceeds realized on an estate's sale of stock to an ESOP, thereby allowing an executor to reduce taxes on an estate by one-half by selling the decedent's company to an ESOP or to a worker-owned cooperative. Under the amendment, certain penalties apply if any portion of the assets attributable to employer securities acquired in such a sale accrue or are allocated for the benefit of a decedent who makes such a sale or a family member of the decedent or any person owning more than 25 percent of the stock of the corporation.

As with the previous provision, this amendment was sponsored by 49 Members of the Senate in 1983, including 14 Members of the Finance Committee, and was approved by the Committee in 1984. This amendment should encourage sales of companies to employee stock ownership plans. In addition, it should help reduce estate taxes. The only real purpose of the estate tax is to break up large accumulations of capital. Tax relief is appropriate for the estates of those who assist others in accumulating capital—particularly when they help those who helped them accumulate that capital.

Facilitate ESOP Financing.—As added by the Deficit Reduction Act of 1984 (DEFRA), present law permits an employer to deduct the cost of dividends paid with respect to stock of an employer that is held by an ESOP, but only to the extent that the dividends are actually paid out currently to employees or beneficiaries as taxable income.

In order to accelerate the repayment of ESOP loans, the amendment permits a deduction for dividends on employer securities if such dividends are used to make payments on an ESOP loan. This amendment was sponsored by 49 Members of the Senate in 1983 and approved by the Finance Committee in 1984. The amendment also enables employees to more quickly begin receiving company dividends as those ESOP loans would be more rapidly repaid. Thus, this provision should have a positive effect on employees' identification with their employer, with corresponding effects on motivation, dedication, productivity, profitability and tax revenues.

In addition, this provision should enable employees to benefit from the widespread practice of companies repurchasing their stock. Because ESOP dividends are not now deductible until stock is allocated to employee's accounts as an ESOP loan is repaid, companies are encouraged to repurchase their stock without an ESOP and retire the shares, thereafter having to pay no dividends. This provision should make it more likely that such stock repurchases will be financed using ESOPs as the technique of finance.

Under the current law, such dividends are deductible with respect to employer stock allocated to participants' accounts as of the date of distribution, but only to the extent that such dividends are paid out currently to employees. Under this bill, an ESOP company could claim a deduction for dividends paid on either allocated or unallocated employer securities, but only to the extent those dividends are used to repay an ESOP loan incurred to acquire the employer securities on which such dividends are paid.

Simplify ESOP Lending.—Under current law, banks, insurance companies and commercial lenders making ESOP loans may exclude from their income one-half of the interest earned on such loans. This provision was sponsored by 49 Members of the Senate and enacted as part of the Deficit Reduction Act of 1984. The provision is intended not only to encourage ESOP lending by existing commercial lenders but also is intended to encourage those with money to lend to enter into the lending business solely for the purpose of making ESOP loans.

This amendment expands on this concept in two respects: First, the provision designating which lenders are eligible for the 50 percent interest income exclusion on ESOP loans is amended to include loans by regulated investment companies (better known as mutual funds). The amendment intends that the tax treatment accorded such interest income be permitted to "flow through" to shareholders of the mutual fund under rules analogous to the treatment of tax-exempt income paid on certain Government obligations.

Second, the bill provides that the exclusion is also available with respect to a loan to a corporation to the extent that, within 30 days, employer securities are transferred to an ESOP in an amount equal to the proceeds of the loan and such contributions are allocable to participants' accounts within one year after the date of the loan. In addition, the original commitment period of the loan is not to exceed seven years.

Under these "immediate allocation" loans, companies would be permitted to borrow money on favorable ESOP-related terms, provided such loans are matched by a contribution of employer securities to the ESOP which are allocable to employees' accounts within one year after the date of the loan. This provision is designed to enable companies to borrow money and immediately allocate the stock to employees' accounts instead of requiring a more complex ESOP loan with employee allocations and employee dividend payouts delayed until the ESOP loan is repaid.

This amendment is necessary if leveraged ESOPs are ever to become commonly used by major companies. Such employers are generally unwilling to utilize ESOP financing for several reasons, including the drawback that the modest interest savings are often insufficient to offset the balance sheet impact of an ESOP loan. At the same time, however, this amendment reflects the philosophy of leveraged ESOP financing by encouraging the use of a company's credit for employees by encouraging companies to borrow to buy a block of stock for employees (much as in a leveraged ESOP).

Extending the interest exclusion to loans by regulated investment companies is advisable as mutual funds have now become a major new source of funds, with assets skyrocketing to more than $80 billion from just $20 billion since the ESOP loan provision was enacted in 1984. In addition, this source of funds should provide additional competition among lenders for ESOP loans—with a positive effect on interest rates for ESOP companies. Thus, in addition to the competition from those lenders who engage solely (or predominately) in ESOP lending, competition for such loans will be provided by mutual fund lenders plus lending provided by banks, insurance companies and other commercial lenders who engage in both ESOP loans and other types of commercial loans.

Encourage Employees to Invest in their Company.—The committee amendment reduces from $30,000 to $7,000 the maximum amount that employees can otherwise contribute to a cash or deferred arrangement (401(k) plan). The amendment also allows an additional $2,500 contribution to 401(k) plans, provided the additional funds are invested in employer stock in an ESOP.

In order for this additional $2,500 limit to be permitted, the 401(k) plan is required to allow all eligible participants to direct that up to $2,500 of elective deferrals be invested in employer securities (but not more than 25% of pay). Thus, in order for any participant in a 401(k) plan to be able to contribute in excess of $7,000, each participant in the 401(k) plan must be permitted to invest in employer securities in the employer-sponsored ESOP (i.e., they must be permitted to direct their first dollar of contributions into the ESOP).

In addition, any employer securities allocated to the account of a participant whose elective deferrals for a year exceed $7,000 are required to remain so allocated during the three-year period beginning with the year following the year in which the employer securities are allocated to a participant's account. Otherwise, the securities are treated as if they were distributed.

Encourage Funds to be Retained as an Employee Benefit.—The amendment also provides an exemption from the proposed 10 percent excise tax on pension plan asset reversions to the extent that amounts that would otherwise be reversion amounts are transferred to an ESOP. Thus, under this provision, employers with excess assets in a defined benefit plan would be permitted to access that cash for corporate purposes without imposition of the 10 percent reversion excise tax provided the cash is used to buy employer securities in trust for employees.

This should help mitigate the fears of those who worry that the proposed reversion excise tax may lead to less adequate funding under defined benefit pension plans because, with this relief available, employers could recover the excess funds for corporate purposes provided the funds are first used to acquire employer stock in trust for employees. Similarly, this provision enables

employers to make excess pension plan assets less attractive (and less accessible) to corporate raiders and leveraged buyout experts. At the same time, as with the 10 percent excise tax on such reversions, this provision should encourage employers to recover such excess assets through a reduction in future contributions rather than through a termination of the defined benefit pension plan.

This relief from the reversion excise tax is appropriate because the funds are being retained in trust for employers to provide benefits for employees in the form of employer securities.

Under the amendment, the amount transferred from the defined benefit plan to the ESOP may be immediately allocated under the plan to ESOP participants, subject to the dollar limits on annual additions under section 415. Alternatively, the amount transferred may be held in suspense account pending allocation (provided allocations are made no more slowly than ratably over a seven-year period). Or the funds transferred may be used to repay an ESOP loan (including interest). Similarly, stock may be held in a suspense account when reversion amounts are utilized to repay an ESOP loan (including interest) provided allocations from the suspense account are made no more slowly than ratably over a seven-year period. Annual additions to employees' accounts for purposes of Section 415 shall be no greater than the cost of the shares to the ESOP.

The amount transferred is not includible in the income of the employer. Thus, the provision does not require an additional deduction under Section 404 for the assets transferred from the defined benefit plan to the ESOP because the amount transferred is not treated as a reversion subject to inclusion in the employer's income but, instead, is treated as a trust to trust transfer of plan assets. The provision is not intended to make any inference concerning the transfer of assets from one qualified plan to another, whether or not such plan has been terminated.

Dividends paid on employer securities held in the suspense account are deductible when either (a) applied to repay an ESOP loan, or (b) paid out currently to plan participants and beneficiaries proportionate to their account balances (attributable to such amounts) on the date such dividends are distributed.

Amounts held in the suspense account and required to be allocated are required to be allocated to participants' accounts before any other employer contributions to the ESOP are allocated. In other words, during the period that reversion amounts are held in a suspense account, the employer is not permitted to make additional contributions to the ESOP to the extent that the contributions, when added to the amount required to be allocated from the suspense account, will exceed the overall limits on annual additions under a defined contribution plan if allocated to participants' accounts. Thus, for example an employer could continue to make contributions to another employer-sponsored defined contribution plan provided the amount contributed, when combined with amounts allocated from the ESOP suspense account (i.e., no less than one-seventh of the total of such amounts), do not exceed the limitation provided under Section 415.

Amounts transferred to a suspense account that (due to the limitations on contributions and benefits under section 415) cannot be allocated to participants' accounts within seven plan years (including the plan year in which such amounts were transferred to the plan) must revert to the employer and will be subject to the 10 percent excise tax in the year in which such reversion occurs.

ESOP's as a Technique of Finance.—The amendment also exempts ESOP's from the proposed 15 percent additional income tax on distributions from qualified plans prior to age 59½. In order to recognize that ESOP's are both a technique of corporate finance and an employee benefit plan. The Committee amendment distinguishes ESOP's from employee benefit retirement plans. The amendment recognizes that retirement is but one of many events that can trigger a distribution of benefits provided under an ESOP. The exemption applies to distributions to the extent that, on the average, a majority of the plan's assets have been invested in employer securities for the five years immediately preceding such distribution. Special rules apply for amounts transferred or rolled over from other plans.

This amendment recognizes that to treat ESOP's as conventional retirement plans would be inconsistent with Congressional intent encouraging their use as a technique of finance. In addition, because this amendment substantially shortens the period over which ESOP accounts must be paid out to departing employees, applying such a tax on required distributions would be harmful to ESOP participants.

Scheduled Expiration of Tax Credit ESOP's.—Under current law, employers may claim a tax credit of up to one-half of one percent of payroll provided such funds are used to acquire employer securities for participants' accounts in a tax credit ESOP (better known as a PAYSOP). In order to provide additional incentives for the use of ESOP's as a technique of corporate finance, and in order to make the ESOP amendment have a positive effect on revenues, the amendment advances by one year (to December 31, 1986) the expiration of the payroll-based tax credit ESOP. As a consequence, this amendment causes the overall ESOP amendment to gain approximately $2.1 billion in Federal revenues in fiscal years 1987-1991.

TECHNICAL AND CLARIFYING AMENDMENTS

ESOP Rollover.—Under current law, if after sale to an ESOP or a worker-owned coop, the ESOP or coop holds 30 percent of the stock of a company, the selling taxpayer can defer recognition of capital gain tax on such sale, provided the proceeds from the sale are invested ("rolled over") in securities of another operating company. This amendment clarifies that the plan or coop must hold 30 percent (by number) of the shares of the stock of the company in order for the selling shareholder to qualify for rollover treatment.

Put Option for Stock Bonus Plans.—Under current law, if a stock bonus plan allows a cash distribution and an employee elects stock, the employee has a put option to the employer on stock received that is not readily tradeable. On the other hand, however, if the plan allows only a stock distribution, then the employee has no put option.

This amendment corrects this anomaly by requiring that stock bonus plans meet the put option requirements now allocable to ESOPs.

ESOP Allocation.—The amendment modifies the prohibited group definition in section 415(c)(6) to conform to the definition of highly compensated employee in the Finance Committee proposal, thereby applying a uniform definition of highly compensated employee.

Distribution on Plan Termination.—Current law requires the employer to maintain a tax credit ESOP until 84 months after the last date stock is allocated. This rule dates from the tax credit ESOP's origins when it was tied to investment and the 84-month requirement limited distributions to employees for 84 months to coincide with the seven-year recapture period on qualifying investments under the investment tax credit provisions of the Internal Revenue Code.

Thus, this amendment allows distribution upon termination of a tax credit ESOP. Alternatively, the amendment allow shares to be sold and the proceeds transferred or rolled over to another plan.

Distributions and Payment.—Current law permits distributions from ESOPs to be deferred until normal retirement age or longer if the employee has not yet separated from service or does not yet have ten years of service. The employer is required to provide a put option on distributions of stock that are not readily tradable. Installment payments under a put option are currently permitted over a five-year period from date of exercise provided a reasonable rate of interest is provided. A ten-year payment schedule is permitted provided adequate security and a reasonable rate of interest are provided, and provided that date is not later than the date an ESOP loan is repaid.

The amendment substantially shortens the distribution period and amends the put option provisions to protect employees without endangering employers. In addition, the amendment recognizes that employers must be permitted an extended period of time to make large payments and that requiring more rapid payment may jeopardize the company and undermine the value of accounts for other employees (for example, if the company encounters liquidity problems due to the need to make large payments to participants). Similarly, the amendment recognizes that enabling a sponsoring employer to disregard "loan shares" enables the employer to plan its ESOP loan repayment schedule (i.e., without liabilities triggered by stock repurchase obligations).

The Committee also recognizes that requiring security for such payments could endanger the company financially (e.g., if an employer's unpledged assets are sufficient to provide such security). The Committee also believes such security is inappropriate because it entails substantial additional administrative expense (e.g., UCC filings) and elevates employees to the status of a secured creditor. In addition, the Committee previously indicated (under the Revenue Act of 1978) that no security was required for payments limited to five years duration.

The amendment provides that unless a participant otherwise elects in writing, distributions must commence not later than one year after the later of the plan year (1) in which the participant terminates employment due to retirement, disability or death, or (2) which is the fifth year following the participant's separation from service (provided the participant does not return to service with the employer prior to that time). In no case, however, are distributions required to be made until the plan year following the plan year in which an ESOP loan is fully repaid.

For all such distributions, the amendment requires that distributions be paid out over no longer than five years provided however that for account balances in excess of

$500,000, distributions may be extended an additional year for each $100,000 in excess of $500,000, but in no case longer than ten years. For these purposes, the account balance would not include any loan shares (i.e., stock acquired with an ESOP loan that is not yet repaid in full).

In the case of a total distribution of employer securities to a participant that are put to the employer, the amendment provides that the employer must pay the option price to the participant in substantially equal annual payments over a period not exceeding five years and beginning not more than 30 days after the exercise of the put option. The employer is not required to provide security with respect to such installment payments but is required to credit a reasonable rate of interest with respect to the outstanding balance under such installment payments of the option price. In the case of a put option exercised as part of an installment distribution, the employer is required to pay the option price within 30 days after the exercise of the option.

Intent of Congress.—The amendment also adds a statement of Congressional intent with respect to employee stock ownership plans. The statement points out that the Congress in a series of laws, and in this bill, has reflected its interest in encouraging ESOPs as a bold and innovative technique of corporate finance for strengthening the private free enterprise system. The statement describes the policy of the Congress that ESOPs be used in a wide variety of corporate financing transactions in order to encourage the participation of employees as beneficiaries of such transactions.

The statement makes clear the Congressional concern that the policy articulated by the Congress will be made unattainable by regulations and rulings that (1) characterize ESOPs as conventional retirement plans, (2) reduce the freedom of ESOPs and employers to take the necessary steps to utilize ESOPs in a wide variety of corporate financing transactions, and (3) impede the establishment and success of these plans.

The laws that reflect Congressional interest in ESOPs as a technique of finance include the Regional Rail Reorganization Act of 1973, the Employee Retirement Income Security Act of 1974 (ERISA), the Trade Act of 1974, the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Revenue Act of 1978, the Regional Rail Reorganization Act Amendments of 1978, the Small Business Development Act of 1980, the Chrysler Loan Guarantee Act of 1980, the Northeast Rail Service Act of 1981, the Economic Recovery Tax Act of 1981, the Trade Adjustment Assistance Act Amendments of 1983 and the Deficit Reduction Act of 1984.

Due to the Committee's approval of amendments changing the philosophy of many employee benefit plans, this amendment restates the purpose of ESOPs as a technique of corporate finance and an employee benefit plan under ERISA designed to create a stock ownership interest for employees, thereby distinguishing it from other employee benefit plans which have as their primary purpose retirement income security.

Subject to the fiduciary standards of ERISA, the amendment intends that ESOPs be widely utilized as a technique of finance in a wide variety of corporate transactions, including transactions financing new capital as well as those structured to transfer ownership of existing capital. To that end, leveraged ESOPs are intended to encourage plan sponsors to utilize corporate credit (for example, to pledge corporate assets) in such a fashion that employees have access to nonrecourse corporate debt (i.e., no personal liability for employees or the plan) for the acquisition by the plan of employer securities.

Plan sponsors are encouraged to utilize dividends paid on such securities to repay ESOP loans and to provide an ownership income for participants and beneficiaries. Similarly, rights acquired by the plan as dividend rights on employer securities may be held by the plan for the benefit of employees.

The Committee is concerned that the ERISA regulatory agencies, in an attempt to treat ESOPs as conventional retirement plans under ERISA, may preclude employers from utilizing ESOPs as a financing technique and may preclude employees from becoming the beneficiaries of transactions that may otherwise be structured to transfer substantial employer ownership to non-employee investors. The Committee recognizes that an ESOP's participation in such transactions may be dependent upon participation by equity investors. Thus, in determining the fair allocation of equity among investors, consideration should be given to the fact that an ESOP generally acquires its shares in return for nonrecourse notes or for debt secured by the employer while other investors generally invest cash, provided, however, that in no case should an ESOP pay more than fair market value for employer securities it acquires.

Mr. President, this amendment is in large part, a restatement of a similar intent of Congress provision enacted as section 803(1) of the Tax Return Act of 1976. The intent of this amendment is to indicate that ESOP financing must be sufficiently flexible to accommodate the vast variety of situations in which it can be utilized to acquire stock for employees. Similarly, as a technique of finance, ESOP financing must be able to accommodate changing circumstances.

For example, under more traditional financing techniques, circumstances often arise in which a company sells the assets acquired with a loan in order to prepay the loan extended to acquire those assets. Similarly, in the case of an ESOP loan, prepayment may be appropriate. For example, in the case of the sale of substantially all of the stock of a company while an ESOP loan is being repaid, it clearly makes sense to allow the sale of stock acquired by the ESOP and use of the proceeds to more rapidly repay the outstanding ESOP loan. There undoubtedly are other cases in which prepayment of an ESOP loan is likewise in the interest of plan participants and this should be accommodated in order for ESOPs to operate as an effective and realistic technique of corporate finance.

It should also be kept in mind that the principal purpose of an ESOP is to acquire and hold employer securities for employees. It is not the intention that ESOPs become pawns of the vagaries of the stock market. Their purpose is not to create a situation in which fiduciaries feel obligated to divest the plan of its investment in employer securities due to temporary fluctuations in price. The goal is to create companies in which an employee stock ownership trust holds employer equity for employees. Thus, the goal is to create a plan which invests in employer securities for employees, not a plan which speculates in those securities—buying in order to sell and selling in order to buy.

In a similar vein, it should be pointed out that it is not at all uncommon or undesirable for individual fiduciaries selected by the board of directors to be responsible for managing a company's ESOP. IN connection with their role of managing the ESOP, these fiduciaries, who may also be corporate officers or directors, are also charged with making investment decisions such as participation in acquisitions by the plan, the distribution of plan benefits (subject to the plan provisions and ERISA) and the determination of the manner in which stock in the ESOP is voted. In making these decisions, fiduciaries are charged with operating in the best interest of plan participants keeping always in mind that the primary purpose of ESOPs under ERISA is to provide for employees a stock ownership interest in their employer.

Mr. LONG. Madam President, I should like to have printed in the RECORD at this point an amendment I have prepared which would make some technical corrections and simply supplant the existing provision in the bill so that we could vote on it. I am not going to do it that way. But I do want to have the amendment printed, so that those interested in this subject can see the names of the Senators. They are as follows: Mr. LONG, for himself, and Mr. ABDNOR, Mr. ARMSTRONG, Mr. BAUCUS, Mr. BENTSEN, Mr. BOREN, Mr. BOSCHWITZ, Mr. BRADLEY, Mr. BURDICK, Mr. BYRD, Mr. CHAFEE, Mr. CHILES, Mr. COCHRAN, Mr. CRANSTON, Mr. DANFORTH, Mr. DECONCINI, Mr. DENTON, Mr. DIXON, Mr. DODD, Mr. DOLE, Mr. DOMENICI, Mr. DURENBERGER, Mr. EVANS, Mr. FORD, Mr. GLENN, Mr. GORE, Mr. GRASSLEY, Mr. HARKIN, Mr. HART, Mr. HATCH, Mr. HATFIELD, Mr. HECHT, Mr. HEFLIN, Mr. HEINZ, Mr. HELMS, Mr. HOLLINGS, Mr. INOUYE, Mr. JOHNSTON, Mrs. KASSEBAUM, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LAXALT, Mr. LEAHY, Mr. LEVIN, Mr. LUGAR, Mr. MATSUNAGA, Mr. MATTINGLY, Mr. MELCHER, Mr. MOYNIHAN, Mr. MURKOWSKI, Mr. NICKLES, Mr. NUNN, Mr. PACKWOOD, Mr. PELL, Mr. PROXMIRE, Mr. PRYOR, Mr. QUAYLE, Mr. RIEGLE, Mr. ROCKEFELLER, Mr. ROTH, Mr. SARBANES, Mr. SASSER, Mr. SIMON, Mr. STAFFORD, Mr. STENNIS, Mr. STEVENS, Mr. SYMMS, Mr. TRIBLE, Mr. WARNER, Mr. WILSON, and Mr. ZORINSKY.

I ask unanimous consent that the amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

On page 2014, beginning with line 1, strike out all through page 2015, line 15, and insert:

"(5) ADDITIONAL $2,500 FOR EMPLOYER SECURITIES.—

"(A) IN GENERAL.—If a plan described in section 4975(e)(7) or which meets the requirements of section 409 includes a qualified cash and deferred arrangement and allows each participant in such plan to elect to have the lesser of $2,500 or the limitation with respect to a participant under section 415(c)(1)(B) of elective deferrals for any taxable year invested in employer securities, then the limitation under paragraph (1) for an individual shall be increased by an amount equal to the lesser of—

"(i) the amount of the individual's elective deferrals for such year invested in employer securities, or

"(ii) $2,500.

"(B) SECURITIES MUST REMAIN IN PLAN FOR AT LEAST 3 YEARS.—If the elective deferrals of any participant exceed the limitation under paragraph (1) for any taxable year by reason of subparagraph (A), then employer securities allocated to such participant for such taxable year by reason of subparagraph (A) (in an amount equal to such excess) must remain so allocated—

"(i) during the 3-taxable year period beginning with the taxable year following the taxable year in which the securities are so allocated, or

"(ii)) if earlier, until the date on which—

"(I) such employee separates from service, or

"(II) the securities are sold in connection with the sale of the employer (or a member of the same controlled group)

"(C) DISTRIBUTION IF SECURITIES NOT ALLOCATED.—If employer securities described in subparagraph (B) cease to be allocated to the participant at any time during the 3-taxable year period described in subparagraph (B), then such securities shall be treated for purposes of this chapter as having been distributed to such participant as of the date on which such securities are no longer allocated to the participant's account.

"(D) EMPLOYER SECURITIES.—For purposes of this paragraph, the term 'employer securities' has the meaning given such term by section 409(1).

On page 2122, beginning with line 23, strike all through page 2123, line 6, and insert:

"(C) CERTAIN PLANS.—Any distribution made to an employee from an employee stock ownership plan defined in section 4975(e)(7) or which meets the requirements of section 409 to the extent that, on average, a majority of assets in the plan have been invested in employer securities (as defined in section 409(1)) for the plan year and the 4 preceding plan years preceding such distribution.

On page 2132, beginning with line 24, strike out all through page 2133, line 19, and insert:

"(3) EXCEPTION FOR EMPLOYEE STOCK OWNERSHIP PLANS.—If, upon termination of a qualified plan—

"(A) any amount is transferred from such plan to an employee stock ownership plan described in section 4975(e)(7) or which meets the requirements of section 409,

"(B) within 90 days after transfer (or such longer period as the Secretary may prescribe), such amount is invested in employer securities (as defined in section 409(1)) or used to repay loans used to purchase such securities,

"(C) that portion of such amount as is not allocated under the plan to accounts of participants in the plan year in which such transfer occurs is—

"(i) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over a period not to exceed 7 years, and

"(ii) when allocated to accounts of participants under the plan, is treated as an employer contribution for purposes of section 415(c), except that—

"(I) the value of the employer securities attributable to each such allocation shall not exceed the value of such securities as of the time such securities were credited to such suspense account, and

"(II) no additional employer contributions shall be permitted to an employee stock ownership plan described in subparagraph (A) of the employer before the allocation of such amount, and

"(D) at least half of the participants in such qualified plan are participants in such employee stock ownership plan (as of the close of the 1st plan year for which an allocation of such securities is required),

such amount shall not be includible in the gross income of the employer if, under the plan, such employer securities must remain in the plan until distribution to participants in accordance with the provisions of such plan."

On page 2173, beginning with line 14, strike all through page 2187, line 14, and insert:

Subtitle C—Changes Relating to Employee Stock Ownership Plans

SEC. 1271. STATEMENT OF CONGRESSIONAL POLICY.

(a) CONGRESSIONAL POLICY.—The Congress, in a series of applicable laws and in this Act, has made clear its interest in encouraging employee stock ownership plans as a bold and innovative technique of finance for strengthening the free provate enterprise system. It is the policy of the Congress that such plans be used in a wide variety of corporate financing transactions as a means of encouraging employers to include their employees as beneficiaries of such transactions. The Congress is deeply concerned that the objectives sought by the series of applicable laws and this Act will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans under the Employee Retirement Income Security Act of 1974, which reduce the freedom of employee stock ownership trusts and employers to take the necessary steps to utilize employee stock ownership plans in a wide variety of corporate transactions, and which otherwise impede the establishment and success of these plans.

(b) APPLICABLE LAWS.—For purposes of this section, the term "applicable laws" means the Employee Retirement Income Security Act of 1974, the Regional Rail Reorganization Act of 1973, the Trade Act of 1974, the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Revenue Act of 1978, the Regional Rail Reorganization Act Amendments of 1978, the Small Business Development Act of 1980, the Chrysler Loan Guarantee Act of 1980, the Northeast Rail Service Act of 1981, the Economic Recovery Tax Act of 1981, the Trade Adjustment Assistance Act Amendments of 1983, and the Deficit Reduction Act of 1984.

SEC. 1272. TERMINATION OF EMPLOYEE STOCK OWNERSHIP CREDIT.

Subparagraph (B) of section 41(a)(2) (defining applicable percentage) is amended—

(1) by striking out "1986, or 1987" and inserting in lieu thereof "or 1986", and

(2) by striking out "1988" and inserting in lieu thereof "1987".

SEC. 1273. ESTATE TAX DEDUCTION FOR PROCEEDS FROM SALES OF EMPLOYER SECURITIES.

(a) IN GENERAL.—Part IV of subchapter A of chapter 11 (relating to taxable estate) is amended by adding at the end thereof the following new section:

"SEC. 2057. SALES OF EMPLOYER SECURITIES TO EMPLOYEE STOCK OWNERSHIP PLANS OR WORKER-OWNED COOPERATIVES.

"(a) GENERAL RULE.—For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate an amount equal to 50 percent of the qualified proceeds of a qualified sale of employer securities.

"(b) QUALIFIED SALE.—For purposes of this section, the term 'qualified sale' means any sale of employer securities by the executor of an estate to—

"(1) an employee stock ownership plan—

"(A) which meets the requirements of section 409, or

"(B) is described in section 4975(e)(7), or

"(2) an eligible worker-owned cooperative (within the meaning of section 1042(c)).

"(c) QUALIFIED PROCEEDS.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified proceeds' means the amount received by the estate from the sale of employer securities at any time before the date on which the return of the tax imposed by section 2001 is required to be filed (including any extensions).

"(2) PROCEEDS FROM CERTAIN SECURITIES NOT QUALIFIED.—The term 'qualified proceeds' shall not include the proceeds from the sale of any employer securities if such securities were received by the decedent—

"(A) in a distribution from a plan exempt from tax under section 501(a) which meets the requirements of section 401(a), or

"(B) as a transfer pursuant to an option or other right to acquire stock to which section 83, 422, 422A, 423, or 424 applies.

"(d) WRITTEN STATEMENT REQUIRED.—

"(1) IN GENERAL.—No deduction shall be allowed under subsection (a) unless the executor of the estate of the decedent files with the Secretary the statement described in paragraph (2).

"(2) STATEMENT.—A statement is described in this paragraph if it is a verified written statement of—

"(A) the employer whose employees are covered by the plan described in subsection (b)(1), or

"(B) any authorized officer of the cooperative described in subsection (b)(2),

consenting to the application of section 4979A with respect to such employer or cooperative.

"(e) EMPLOYER SECURITIES.—For purposes of this section, the term 'employer securities' has the meaning given such term by section 409(1)."

(b) CONFORMING AMENDMENTS.—

(1) Section 409(n)(1) is amended—

(A) by inserting "or section 2057" after "section 1042",

(B) by inserting "or any decedent if the executor of the estate of such decedent makes a qualified sale to which section 2057 applies," after "securities" in subparagraph (A)(i) thereof, and

(C) by inserting "or the decedent" after "taxpayer" in subparagraph (A)(ii) thereof.

(2) Sections 4979A is amended—

(A) by inserting "or section 2057" after "section 1042" in subsection (b)(1) thereof, and

(B) by inserting "or section 2057(d)" after "section 1042(b)(3)(B)" in subsection (c) thereof.

(3) The table of sections for part IV of subchapter A of chapter 11 is amended by adding at the end thereof the following new item:

"Sec. 2057. Sales of employer securities to employee stock ownership plans or worker-owned cooperatives."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after the date of the enactment of this Act with respect to which an election is made by the executor of an estate who is required to file the return of the tax imposed by the Internal Revenue Code of 1954 on a date (including extensions) after the date of the enactment of this Act.

SEC. 1274. PROVISIONS RELATING TO LOANS USED TO ACQUIRE EMPLOYER SECURITIES.

(a) DEDUCTION FOR DIVIDENDS PAID TO REPAY LOANS.—

(1) IN GENERAL.—Paragraph (2) of section 404(k) (relating to dividend paid deductions) is amended by striking out "or" at the end of subparagraph (A), by striking out the period at the end of subparagraph (B) and inserting in lieu thereof ", or", and by inserting at the end thereof the following new subparagraph:

"(C) the dividend with respect to employer securities is used to make payments on a loan described in section 404(a)(9)."

(2) CONFORMING AMENDMENT.—Section 404(k) is amended by adding at the end thereof the following new sentence: "Any deduction under paragraph (2)(C) shall be allowable in the taxable year of the corporation in which the dividend is used to repay the loan described in such paragraph."

(b) SECURITIES ACQUISITION LOANS.—

(1) APPLICATION TO INTEREST RECEIVED BY PIC.—

(A) IN GENERAL.—Section 133(a) (relating to exclusion for interest on certain loans used to acquire employer securities) is amended by striking out "or" at the end of paragraph (2), by inserting "or" at the end of paragraph (3), and by adding at the end thereof the following new paragraph:

"(4) a regulated investment company (as defined in section 851),".

(B) CONFORMING AMENDMENT.—Section 852(b)(5) is amended by adding at the end thereof the following new subparagraph:

"(C) INTEREST ON CERTAIN LOANS USED TO ACQUIRE EMPLOYER SECURITIES.—For purposes of this paragraph—

"(i) 50 percent of the amount of any loan of the regulated investment company which qualifies as a securities acquisition loan (as defined in section 133) shall be treated as an obligation described in section 103(a), and

"(ii) 50 percent of the interest received on such loan shall be treated as interest excludable from gross income under section 103."

(2) SECURITIES ACQUISITION LOAN.—Section 133(b)(1) (defining securities acquisition loan) is amended to read as follows:

"(1) IN GENERAL.—For purposes of this section, the term 'securities acquisition loan' means—

"(A) any loan to a corporation or to an employee stock ownership plan to the extent that the proceeds are used to acquire employer securities for the plan, or are used to refinance such a loan, or

"(B) any loan to a corporation to the extent that, within 30 days, employer securities are transferred to the plan in an amount equal to the proceeds of such loan and such securities are allocable to accounts of plan participants within 1 year of the date of such loan, except that this subparagraph shall not apply to any loan the original commitment period of which exceeds 7 years.

For purposes of this paragraph, the term 'employer securities' has the meaning given such term by section 409(1)."

(c) EFFECTIVE DATES.—

(1) DIVIDENDS.—The amendments made by subsection (a) shall apply to taxable years beginning after the date of the enactment of this Act.

(2) SUBSECTION (b).—

(A) The amendments made by subsection (b)(1) shall apply to loans used to acquire employer securities after the date of the enactment of this Act, including loans used to refinance loans used to acquire employer securities before such date if such loans were used to acquire employer securities after July 18, 1984.

(B) Section 133(b)(1)(A) of the Internal Revenue Code of 1954, as added by subsection (b)(2), shall apply to loan refinancings after the date of the enactment of this Act.

(C) Section 133(b)(1)(B) of the Internal Revenue Code of 1954, as added by subsection (b)(2), shall apply to employer securities transferred after the date of the enactment of this Act with respect to any securities acquisition loan incurred after July 18, 1984.

SEC. 1275. REQUIREMENTS FOR EMPLOYEE STOCK OWNERSHIP PLANS.

(a) DISTRIBUTIONS ON PLAN TERMINATIONS PERMITTED.—

(1) IN GENERAL.—Paragraph (1) of section 409(d) (requiring that employer securities must stay in the plan) is amended by striking out "or separation from service" and inserting in lieu thereof "separation from service, or termination of the plan".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to plan terminations after December 31, 1984.

(b) DISTRIBUTION AND PAYMENT REQUIREMENTS.—

(1) IN GENERAL.—Section 409 (relating to qualifications for employee stock ownership plans) is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

"(o) DISTRIBUTION AND PAYMENT REQUIREMENTS.—A plan meets the requirements of this subsection if—

"(1) DISTRIBUTION REQUIREMENT.—

"(A) IN GENERAL.—The plan provides that, unless the participant otherwise elects, the distribution of the participant's entire account balance in the plan will be commenced not later than 1 year after the close of the plan year—

"(i) in which the participant separates from service by reason of the attainment of normal retirement age under the plan, disability, or death, or

"(ii) which is the 5th plan year following the plan year in which the participant otherwise separates from service, except that this clause shall not apply if the participant is reemployed by the employer before such year.

"(B) EXCEPTION FOR CERTAIN FINANCED SECURITIES.—For purposes of this subsection, the account balance of a participant shall not include any employer securities acquired with the proceeds of the loan described in section 404(a)(9) until the close of the plan year in which such loan is repaid in full.

"(C) LIMITED DISTRIBUTION PERIOD.—Unless the plan provides that participant may elect a longer period, the plan may provide that a participant shall receive the distribution described in this paragraph over a period not longer than the greater of—

"(i) 5 years, or

"(ii) in the case of a participant with an account balance in excess of $500,000, 5 years plus 1 additional year (but not more than 5 additional years) for each $100,000 or fraction thereof by which such balance exceeds $500,000.

"(2) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the dollar amounts under paragraph (1)(C) at the same time and in the same manner as under section 415(d)."

(2) CONFORMING AMENDMENT.—Section 409(a)(3) is amended by striking out "and (h)" and inserting in lieu thereof "(h), and (o)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to distributions attributable to stock acquired after December 31, 1986.

(c) PUT OPTION REQUIREMENTS.—

(1) PAYMENT REQUIREMENT.—

(A) IN GENERAL.—Subsection (h) of section 409 (relating to right to demand employer securities; put option) is amended by adding at the end thereof the following new paragraphs:

"(5) PAYMENT REQUIREMENT FOR TOTAL DISTRIBUTION.—If an employer is required to repurchase employer securities which are distributed to the employee as part of a total distribution, the requirements of paragraph (1)(B) shall be treated as met if—

"(A) the amount to be paid for the employer securities is paid in substantially equal periodic payments (not less frequently than annually) over a period beginning not later than 30 days after the exercise of the put option described in paragraph (4) and not exceeding 5 years, and

"(B) there is reasonable interest paid on the unpaid amounts referred to in subparagraph (A).

For purposes of this paragraph, the term 'total distribution' means the distribution within 1 taxable year to the recipient of the balance to the credit of the recipient's account.

(6) PAYMENT REQUIREMENT FOR INSTALLMENT DISTRIBUTIONS.—If an employer is required to repurchase employer securities as part of an installment distribution, the requirements of paragraph (1)(B) shall be treated as met if the amount to be paid for the employer securities is paid not later than 30 days after the exercise of the put option described in paragraph (4)."

(B) EFFECTIVE DATE.—The amendment made by this paragraph shall apply to distributions attributable to stock acquired after December 31, 1986, except that a plan may elect to have such amendment apply to all distributions after the date of the enactment of this Act.

(2) PUT OPTION REQUIREMENT EXTENDED TO STOCK BONUS PLANS.—

(A) IN GENERAL.—Section 401(a)(23) is amended to read as follows:

"(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of sections 409(h) and (o), except that in applying section 409(h) for purposes of this paragraph, the term 'employer securities' shall include any securities of the employer held by the plan."

(B) EFFECTIVE DATE.—The amendment made by this subsection shall apply to distributions attributable to stock acquired after December 31, 1986.

(d) NONDISCRIMINATION REQUIREMENTS.—

(1) IN GENERAL.—Subparagraph (A) of section 415(c)(6) is amended by striking out "the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii)" and in-

serting in lieu thereof "highly compensated employees (within the meaning of section 414(q))".

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 415(c)(6) is amended by striking out clauses (iii) and (iv) thereof.

(B) Subparagraph (C) of section 415(c)(6) is amended by striking out "the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii)" and inserting in lieu thereof "highly compensated employees (within the meaning of section 414(q))".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to years beginning after December 31, 1986.

Mr. LONG. Madam President, we now have 10 million employees who own stock in the companies for which they work. It has been projected that sometime in the next 10 years, there will be more employees who own stock in their companies than there will be members of labor unions.

There is no conflict here. Many members of labor unions are some of the strongest supporters of employee stock ownership but this is an indication that the idea of an employee owning a piece of the action is catching on and moving forward. It is well to note that this is moving. The more people see it, the more it is liked by the employees and employers. It brings a better understanding and a new mood of cooperation and sympathy and agreement between management and labor. It works to the mutual advantage of both.

I have made many speeches on this subject, but I will not incorporate them in the RECORD at this point. If any of my colleagues are interested in these speeches, I will be happy to supply them.

I thank my colleagues for the support they have provided. I particularly thank the Senator from Montana [Mr. BAUCUS] for his valuable contribution on two amendments in this package which are his handiwork. I appreciate very much his interest and his contribution and his active support of employee stock ownership.

Mr. President, I will be retiring at the end of this Congress. Since 1973 I have engaged in a legislative labor of love concerning employee stock ownership—believing that we in the Congress have an obligation to expand capital ownership opportunities to as many Americans as possible, and particularly expand those opportunities to working Americas. With that in mind, I have sponsored a series of amendments over the years designed to advance this idea through the use of this technique of corporate finance known as the employee stock ownership plan.

I am happy to report that, although there is much yet to be done, ESOP's are beginning to have an impact—with more than 10,000,000 employees now participating in ESOP's in more than 7,000 corporations nationwide.

Mr. President, I am convinced that this Nation and this Nation's economy would be much improved if we in the Congress made a point of ensuring more widespread participation in capital ownership. We would have a far more equitable system, a far more productive and competitive economy, and an economic system that those we oppose would find far more difficult to attack.

It is my hope that all Members of the Senate will join me in support of this amendment. In contrast to what the sponsors of this amendment propose, the House bill looks in the opposite direction—toward phasing out those provisions of tax law which help workers to own "a piece of the action." It is to the advantage of working Americans that the Senate insist on retaining those provisions and retaining the Finance Committee amendment in its conference with the House.

Mr. President, employee stock ownership is perhaps the most bipartisan issue I have ever encountered. Expanded capital ownership is a political rainbow that can be painted in any color the occasion calls for. Democrats, for example, may prefer to think of the advantages of cutting the working man in on a piece of the action. Republicans, on the other hand, may prefer to point out how ESOP's can help make every man a capitalist. Both are equally true.

Yet employee stock ownership is in no sense a single-issue concept. Expanded capital ownership is only one aspect and, some might argue, not the most important aspect of the ESOP concept. I believe this Nation needs incentives for expanding capital ownership. I believe that broadened capital ownership should be a goal of this Nation's economic policy.

For those of you who know the history of my father, Huey Long, it should come as no surprise that I view ESOP's as a type of populism without Robin Hood—a way to expand ownership without taking away from current owners. We do not need to redistribute the wealth of current owners; what we need is a way to expand the ownership of future wealth—wealth that does not yet have owners.

Yet ownership is but one aspect of the many reasons I and others continue to advocate incentives for broadening capital ownership and employee stock ownership in particular. Let me mention just a few of the many new political issues that can be addressed by this new concept in finance. For example, ESOP's offer:

A new approach to fostering human dignity and autonomy.

A new theory about motivation, dedication and productivity.

A new way to stimulate international competitiveness.

A new definition of economic opportunity.

A new approach to management theory.

A new hope for labor-management relations

A new strategy for union organization.

A new focal point for a progressive agenda.

A new economic model for the United States to advocate in its foreign relations.

A new way to work toward an economic counterpart to political democracy.

A new concept in social and economic justice.

A new approach to privatization of government-owned enterprise.

A new way to structure mergers, acquisitions and leveraged buyouts.

A new way to think about retirement policy.

A new way to respond to the competitive reality of deregulation.

A new hope for bipartisan economic solutions.

A new way to avert plant closings.

A new way to structure State-level economic incentives.

A new way to influence the economic development agenda of a city, State or region.

A new way to relieve fiscal pressures—such as taking pressure off Social Security.

A new way to influence income flows.

A new way to influence environmental issues, for example, by encouraging local versus absentee ownership.

A new approach to small business continuity.

A new approach to estate planning.

A new way to promote respect for private property.

A new way to foster community cohesiveness.

A new way to finance Government contracts.

A new way to finance public services.

A new approach to providing public funding for privately-owned ventures.

And, for the philosophically minded, a new way to move from status, for example, slave, serf and worker, to contract, for example, employee and employee-owner.

What is the key political message in all this? In its most basic sense, ESOP's are about participation—and participation is the very heartbeat of a democracy.

That is why the ESOP concept is—and will remain—so potent. Denial of the opportunity for participation is denial of human dignity and democracy. It simply will not work.

Encouraging the use of financing techniques that expand capital ownership can only result in a better America. That approach can create econom-

ic autonomy and personal dignity and foster social and cultural harmony.

In addition, such an approach would engender a renewed respect for private property, and a sense of thankfulness and gratitude for this wonderful Nation in which we live.

Our tax system can both impoverish people and empower them. My hope is that our tax system will no longer impoverish anyone. This bill goes a long way toward achieving that laudable goal. It is my hope that a time will come when the tax system can be used to empower everyone as well. The ESOP amendments in this bill, when combined with those enacted previously, will help move us in that direction.

Mr. BAUCUS. Mr. President, I very strongly support the amendment offered by the Senator from Louisiana.

We all know that the Senator from Louisiana often makes a point by telling a story. I would like to try to make a point by giving a little history lesson.

The last time we overhauled the Tax Code was 1954. That was quite a year.

Eisenhower was President.

Joe DiMaggio was married to Marilyn Monroe.

And Senator RUSSELL LONG was serving his first term as a member of the Senate Finance Committee.

As I understand it, at that time he offered several amendments, including an amendment to increase the personal exemption and an amendment to close loopholes involving stock dividends.

So the Tax Code of 1954 not only had Senator LONG's fingerprints on it, but also every tax bill since has had his signature on it.

That has been all to the good.

Through three decades, Senator LONG has had one of the toughest jobs in the country: Raising revenue to support the necessary functions of our Government.

He has discharged that responsibility with tact, talent, and tenacity.

As our distinguished majority leader said in his first speech upon succeeding Senator LONG as chairman:

> Senator LONG's power is derived, not from his position with the majority, nor even from his mastery of the legislative process alone. His power derives from his absolute command of the field of finance, and his absolute professionalism in leading others less versed than he.

One of Senator LONG's most important legislative contributions has been to expand the ownership of the Capital.

Former Treasury Secretary William Simon recently wrote:

> Perhaps the most important reason why Americans should remember this great man with gratitude is that for many years, without much publicity, Mr. LONG has been a dedicated and effective champion of expanding the distribution of private property ownership among the people of the United States.

Senator LONG has accomplished this by promotion employee stock ownership plans.

Why are ESOP's so valuable? People work harder when they know that there is a direct connection between their performance and their pay.

As a result, we can increase our economic productivity by giving American workers a greater stake in their companies' profits. ESOP's do that! They make employees of their companies!

As a result, companies that provide ESOP's frequently have:

Higher productivity; they have better labor/management relations; and they have better cash flow.

For years, Congress has recognized the utility of ESOP's, and enacted tax provisions that encourage their use.

The Finance Committee bill that we are considering today contains several such provisions.

In addition, the committee bill includes the statement that:

> The Congress has made clear its interest in encouraging employee stock ownership plans as a bold and innovative technique of finance for strengthening the free enterprise system.

□ 1140

Given the important role ESOP's can play promoting U.S. competitiveness, I believe it is important for the entire Senate to affirm this statement.

That would be a fitting tribute to Senator LONG.

Some years ago, the Senate charged a special committee to select the five most distinguished Senators in U.S. history. The five were Henry Clay, John Calhoun, Daniel Webster, Robert LaFollette, and Robert Taft.

Each had served on the Finance Committee, three as chairman.

Senator LONG has carried on their tradition.

Edmund Burke once said:

> An ability to preserve, and an ability to improve, taken together, would be my standard of a statesman.

As much as any person who has ever served in this Chamber, RUSSELL LONG meets that definition.

As a tribute to his long and diligent work, I urge my colleagues to support this amendment.

Mr. PACKWOOD. Madam President, having worked with Senator LONG on this issue for many, many years, this is not an issue where everyone should share credit. This is one where he should have sole credit. We would not have ESOP's in the law today but for RUSSELL LONG. They would be in the law 2 years and dropped but for RUSSELL LONG; they would be in the law 4 years and dropped but for RUSSELL LONG.

I hope now they have been in the law long enough that when he leaves the Senate we no longer will have debates about dropping them. They have been the bulwark of capitalism. They should be continued and expanded.

I hope when the debate on this amendment is done we will have a rollcall vote 100 to nothing so we can stand behind this amendment when we go to conference.

Mr. BAUCUS. Madam President, if the Senator will yield, I think the Senator made a very important statement. Not only has Senator LONG been the initiator of ESOP's, he has been the Senator who prevailed and persevered so the provisions are deeply embedded in the code and part of American life.

I agree with the final point the chairman made, namely, that now we all know that ESOP's are firmly in the code, firmly a fabric of American life and no longer hear some folks saying, "When Senator LONG leaves, we don't have to worry about ESOP's any more."

I think the Senator from Louisiana has made a major contribution. ESOP's are going to make the America of the next century a very strong, competitive country. Without this concept and concepts similar to it, it is the judgment of this Senator that the country would be dramatically worse off.

I thank the Senator.

Mr. LONG. Madam President, I thank my colleague for his kind words that he said about me.

The Senator should not, however, be disappointed if this does not receive 100 votes.

It has always been my thought on an amendment if I have 51 votes plus the strong support of the committee chairman, that is all I really need.

I thank the chairman and also thank Senator BAUCUS for his kind words.

Mr. PACKWOOD. Madam President, when RUSSELL LONG was chairman, you did not need 51 votes. If you had RUSSELL LONG you won.

I would like to think the same would be true here.

Mr. LONG. I thank the chairman.

Mr. HATFIELD. Mr. President, I rise today to join my good friend from Louisiana, Senator LONG, the ranking member of the Finance Committee, in cosponsoring this divided portion of the Finance Committee amendment concerning employee stock ownership plans, or "ESOP's." It is my hope that the conferees will insist upon the Senate provisions and insist that current law regarding ESOP's be maintained as permanent provisions in the Internal Revenue Code.

Since 1973, I have been a strong supporter of the use of the ESOP, which I believe is the most important innovation in investment finance developed in decades. The Finance Committee amendments would further the two basic objectives of the current ESOP provisions: First, to provide companies with an additional and less-expensive

means of financing corporate development, thereby building a property stake for the company while raising dividend income for stockholders; and, second, to provide an effective means for employees to become owners of stock and expand stock ownership in this country.

Mr. President, ESOP's contribute greatly to diversifying capital stock ownership, to enabling citizens to participate directly in the profitability of their employers and to providing a convenient and available source of capital for companies seeking to expand. Ultimately, it is my hope that these stock ownership plans will promote economic prosperity for employers and employees and will lead to a more stable national economy.

I need not describe specifically the provisions contained in the Finance Committee bill. However, one of the amendments to the ESOP provisions is the inclusion of a statement of congressional intent explaining in part the rationale for these amendments. I wholeheartedly concur with this statement and restate it here:

The Congress has made clear its interest in encouraging employee stock ownership plans as a bold and innovative technique of finance for strengthening the free private enterprise system. The Congress intends that such plans be used in a wide variety of corporate financing transactions as a means of encouraging employers to include their employees as beneficiaries of such transactions. The Congress is deeply concerned that the objectives sought by this series of laws will be made unattainable by regulations and rulings which treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of employee stock ownership trusts and employers to take the necessary steps to utilize employee stock ownership plans in a wide variety of corporate transactions, and which otherwise impede the establishment and success of these plans.

It is the unanimous opinion of the Finance Committee and myself and others that it is appropriate to expand on the current incentives that advance the idea of broader capital ownership, and employee stock ownership in particular, and to make such incentives a permanent part of the Internal Revenue Code. Consequently, I urge support for this resolution.

Mr. President, my support for the ESOP provisions and this resolution would not be complete without paying special tribute to my dear friend from Louisiana, Senator LONG, who has been the leading advocate for ESOP's. Senator LONG's motivation in advocating the establishment of ESOP's is not partisan, nor is it political. As is characteristic of the senior Senator from Louisiana, his purpose is simply to bring out the best in our free enterprise system to grant to those who work to make our economy succeed the opportunity to share in that success.

As it is mine, the dream of Senator LONG of the future of America pictures our Nation as once where the wealth is reasonably spread among all Americans. It is a dream of simple and basic equity.

This will be Senator LONG's last tax bill, one which, if adopted, will be the crown jewel of a career distinguished for its number of significant accomplishments. If these provisions are preserved at conference and their permanence in the code is maintained, then my good friend from Louisiana may take great pride and satisfaction that he has left a legacy to the American people which will advance economic growth for years to come.

Mr. KENNEDY. Mr. President, I am pleased to cosponsor this ESOP resolution, and I intend to vote for it enthusiastically. But more important, I am proud to join my colleagues in saluting an old friend, a Senator without parallel, a man whose grand vision of opportunity for all has guided his entire public life.

This resolution endorses the Finance Committee's provisions regarding employee stock ownership plans—legislation I was proud to cosponsor when it was first introduced in 1983. But what I want to say goes far beyond those specifics, for they are only the tip of the iceberg.

They represent an idea about our country, an idea that is rooted in the belief that national greatness can only be obtained when every citizen is a beneficiary of the blessings of America, an idea that is premised on the understanding that a strong democracy cannot endure a permanent division between haves and have nots, an idea that has found its fullest expression in the belief that it is the supreme responsibility of Government to advance real opportunity for all.

RUSSELL LONG has pursued this vision with remarkable success throughout his long and remarkable career—a career which surely will not end next January.

I have been honored to serve with RUSSELL LONG for over two decades. For all those years, he has graced this Chamber with his vision, his intellect, his wit, and his friendship. I commend him for his outstanding public service to the people of Louisiana and to all the people of America. He ranks with the greatest Senators who have ever served in this body, and we shall miss him in the years and the debates to come.

Mr. ROCKEFELLER. Mr. President, I rise in support of this amendment, and wish to commend my distinguished colleague from Louisiana [Mr. LONG] for all he has done over a period of many years to encourage employee ownership of American industry. No one in Congress knows more about the issue of employee stock ownership plans [ESOP's] than Senator LONG, and his advocacy has enormously increased public awareness of their value to workers and companies alike. His leadership will be deeply missed when he leaves the Senate, but his vision will guide those of us who share it for years to come.

I have long believed that ESOP's are an important and innovative way to improve industrial relations and strengthen business performance. I have been tremendously impressed with the experience in West Virginia of Weirton Steel—the largest employee-owned company in the country. Four years ago, this plant was slated to close down, eliminating more than 7,000 jobs and thoroughly ravaging the economy of the surrounding area. The workers and residents of Weirton were determined to prevent this catastrophe and, as Governor, I was privileged to work with them. The key to saving the mill was the establishment of an ESOP, which enabled the workers to buy the plant.

Now, instead of an idle facility, Weirton boasts one of the only profitable steel companies in the country. Recently, the company was able to distribute $20 million—about one third of its 1985 profits—to the more than 8,000 workers covered by its ESOP. In an industry suffering from massive cutbacks in production and steady losses of employment, Weirton's success is truly stunning.

The ESOP at Weirton represented much more than a technique of financing the purchase of the mill: it was the cornerstone of a far-reaching cooperative effort by labor and management to make—and keep—the operation profitable. Workers are extensively involved in decisions at Weirton—at all levels of the organization from the shop floor to the board room. Constructive labor-management relations won't insulate Weirton from the many problems plaguing the steel industry, but I'm convinced they can make a big difference. The ESOP and the style of management it encouraged at this company, in my view, have strengthened the workers' stake in the operation and helped to make it such a financial success.

Not all employee-owned companies have done as well as Weirton, of course, but I think the track record of plants that were saved from shutting down through employee buyouts is quite good. Based on past experience, there's every reason to hope that interest in ESOP's will continue to grow—and provide benefits to a wider segment of American industry.

Currently, close to 7,000 companies in this country have ESOP's covering more than 10 million workers. The majority of cases—unlike Weirton's—do not involve a company in danger of closing. Typically, ESOP's have been used either to sell closely-held compa-

nies to employees when the owner decides to retire or as a way to raise capital for the company.

I welcome these developments because the companies transferred to the workers tend to be healthy ones—and I know that's a trend Senator LONG has consistently sought to encourage. Under the pending bill, for example, when a business is sold to the employees, up to 50 percent of the proceeds can be excluded from the former owner's estate. As I understand them, the tax proposals tend to be refinements of existing incentives to establish ESOP's—and are paid for by repealing a tax credit that companies with ESOP's now claim.

From the examples I'm familiar with, I consider ESOP's a valuable financial benefit. The evidence suggests even lower paid workers accumulate significant amonts from such plans. Relatively few ESOP's are established in place of a pension plan, and it doesn't appear that employees are generally required to sacrifice wages in return for an ESOP. Where ESOP's represent a good deal for workers, we should want to see them flourish. And where ESOP's can help us transform our industrial landscape by fostering better labor-management relations and impressive improvements in productivity, we should welcome their growth. I commend Senator LONG for his vision on this issue and for his tremendous dedication to it. I am pleased to join him in support of this amendment, and look forward to seeing these ideas advance.

SENATOR RUSSELL LONG: THE CHAMPION OF ESOP'S

Mr. SASSER. Mr. President, I rise to commend our distinguished colleague, Senator RUSSELL LONG, for his untiring work in promoting the concept of employee stock ownership plans [ESOP's].

The senior Senator from Louisiana has many, many legislative achievements to his credit. But perhaps none is dearer to him that that of employee stock ownership plans. He knows that this concept is one that truly provides for the democratic ownership of capital in this country. He knows that ESOP's are a vehicle whereby American workers can more fully share in the economic fruits of their labor.

So it is fitting that we honor Senator RUSSELL LONG today for the work that he has done for the American people by being the champion of employee stock ownership plans.

ESOP's are a most encouraging trend in American business—one that is saving thousands of jobs and giving millions of American workers the opportunity to gain direct ownership of the companies that employ them. The growth of ESOP's has been remarkable over the last few years. As of 1985, nearly 10 million American workers had enrolled in these plans. The number of new plans being created is increasing at a 10-percent annual rate. At that rate, it is estimated that 25 percent or more of all U.S. workers will own part or all of their companies by the year 2000.

ESOP's offer several important benefits. First, they give employees the chance to share in company profits. Second, as part owners of the companies that employ them, workers enjoy a new sense of pride in their work. "If you waste time," says one ESOP employee, "you're only wasting your own money." Finally, in cases of failing plants and companies, ESOP's give employees the opportunity to buy out the companies and save their jobs. William F. Whyte of Cornell University estimates that ESOP-financed worker buyouts have saved 50,000 jobs since the early 1980's.

A recent case in my native State of Tennessee exemplifies the potential benefit of ESOP's. North American Rayon Corp. announced last year that it would close its facility in Elizabethton, TN, and terminate the employment of 1,300 people working there. Reacting to this announced closing, representatives of the United Textile Workers of America successfully negotiated with North American Rayon to keep the plant open. They also struck a deal which allows the workers at Elizabethton to buy the company through the means of an ESOP. The turnaround at the Elizabethton facility since the announced closing has been remarkable. Nearly 200 new employees have been hired and production has increased.

In announcing the creation of the ESOP to employees, North American Rayon plant manager, Jack Conley, stated:

> Yesterday you worked to make money for someone else. Today, you work to make money for yourselves.

His statement captures the powerful incentive of an ESOP. And it is why I believe ESOP's can do a lot to improve productivity and the quality of work in American industries.

The people of Elizabethton and the rest of the country are indebted to RUSSELL LONG for the work he has done for them on ESOP's.

EXPANDED CAPITAL OWNERSHIP AND THE IDEOLOGICAL HIGH GROUND

● Mr. LUGAR. Mr. President, I strongly support the employee stock ownership concept for Americans and as it relates to American foreign policy. Last fall I spoke at length in this Chamber on the virtues of ESOP's and the importance of American export of the ESOP concept. Thanks to the Presidential Task Force on Project Economic Justice we are establishing a comprehensive strategy and policy framework for encouraging the use of the employee stock ownership plan and other expanded ownership vehicles within Central America and the Carribean Basin. This effort involves a growing awareness that both peace and freedom result from justice, and that a just free enterprise system is the only truly effective answer to the false promise of Marxism. In order to deal with the causes, and not just the symptoms, of economic justice, we must connect workers to property and power; we must promote a free enterprise version of economic justice. And, in particular, we must encourage self-help and worker ownership for the people of Central America and the Carribean.

A principal aim of expanding capital ownership in the region is to develop a broadened political constituency among workers in support of private enterprise as the best means to accelerate economic development and political self-determination. A new constituency must be created for free enterprise and against collective and state ownership of industry and agriculture. Popular political support for free, private enterprise is essential not only to secure political stability and democratic processes, but to increase economic productivity and local capital formation. The ESOP concept is an effective tool that the United States can export in support of the free enterprise version of economic justice.

Finally, it is a privilege to note again that the primary champion of employee stock ownership in Congress is my venerable colleague, Senator RUSSELL LONG. To Senator LONG belongs much of the credit for the promise and popularity of the ESOP concept. His constant and creative leadership will be a continuing inspiration.●

Mr. MATSUNAGA. Mr. President, I rise in strong support of the amendment offered by my dear friend, the distinguished senior Senator from Louisiana [Mr. LONG]. As an early convert to the merits of employee stock ownership plans [ESOP's], I am convinced that Senator LONG has laid the ground work for a workers' capitalism in America, and that he will go down in history as the father of one of the greatest democratizing movements in this country.

Mr. President, no one has done more to encourage employee stock ownership plans [ESOP's]—and thereby advance the cause of workers' capitalism—than our former chairman of the Finance Committee, RUSSELL LONG. Thanks in large measure to Senator LONG's vision and leadership, ESOP's have proven to be an effective means of enhancing business development and productivity while encouraging employee ownership participation in the American free enterprise system. The provisions under current law which encourage the development and growth of ESOP's, as well as the provisions in the Finance Committee tax

reform bill pending before us, are evidence of Senator LONG's success in this regard.

Mr. President, the Long amendment now under consideration includes a statement of congressional policy which I commend to my colleagues. Employee stock ownership plans are held to be a bold and innovative tool of corporate finance for the purpose of strengthening the private free enterprise system. It is stated that the policy of the Congress is that ESOP's be used in a variety of financing transactions in order to encourage the participation of employees as beneficiaries of such transactions.

The Long proposal makes a number of changes in the tax treatment of ESOP's which advance the idea of broader capital ownership and employee stock ownership, as follows:

First, it permits a deduction for dividends on employer securities if such dividends are used to make payments on an ESOP loan;

Second, it permits a partial exclusion from an estate for the proceeds realized on an estate's sale of employer securities to an ESOP;

Third, it expands the deduction for dividends paid on ESOP stock to apply to dividends that are used to repay ESOP loans;

Fourth, it exempts ESOP's from the excise tax on early withdrawals from pension plans;

Fifth, it allows an additional $2,500 401(k) contribution if the additional funds are invested in employer stock in an ESOP; and

Sixth, it provides an exemption from the proposed 10-percent excise tax on pension plan asset revisions to the extent revision amounts are transferred to an ESOP.

I urge my colleagues, in tribute to the distinguished senior Senator from Louisiana, to support the Long amendment to strengthen the hand of the Senate tax reform conferees on the ESOP issue.

Mr. BYRD. Mr. President, I am pleased to join my good friend and colleague, Senator RUSSELL LONG, in supporting the Finance Committee-approved employee stock ownership plan [ESOP] provisions of the tax reform bill.

These provisions enhance and expand a proven program. When I say a proven program I know whereof I speak. It is a program which distributes the wealth and which embodies the best concepts of a democratic society, that of participation, involvement, and ownership, with each participant, through joint ownership, entitled to a portion of the profits derived from his labors. The Weirton Steel Corp., located in Weirton, WV, that is—the largest wholly employee-owned company in the Nation and is a prime example of the successful utilization of the ESOP concept. Because of the employee stock ownership plan, the 8,400 employees of Weirton Steel, who stood to lose their jobs in 1982, when National Steel announced it would sell the plant to its employees or close the plant, are continuing to hold jobs and to contribute to tax revenues of the State of West Virginia and the Nation.

Absent the ESOP program, these steelworkers would not have the jobs that they hold today. Not only that, but the city of Weirton would be a ghost town and the reverberations of that shutdown would have been felt not only through the northern panhandle of West Virginia but also in the adjoining States of Pennsylvania and Ohio and all throughout the State of West Virginia.

So, we in West Virginia know whereof we speak when we speak of ESOP and we know who is the father of the program—Senator RUSSELL LONG.

He has now, and he always will have, the gratitude and the affections of the citizens of West Virginia for his role in the creation of the Weirton Steel Corp., one of the largest employers in West Virginia.

Through earlier Federal legislation sponsored by Senator LONG to create a tax deductible financing technique—and I was proud that Senator LONG asked me to join as a cosponsor—the Weirton employees were able to purchase their plant, and, through sacrifice and determination and hard work, to keep it operating. Not only is Weirton Steel operating; it has also shown a profit each quarter for the nine consecutive quarters since the new company was established. In Weirton, we saw a community and labor and management working together, all sacrificing but coordinating their efforts and cooperating to come together in a very successful effort: the ESOP Weirton Steel Co.

The company is revitalizing itself by continued investment in new equipment and processes so that it can continue to be competitive in world steel markets in the future.

In March of this year the company distributed its first profit-sharing funds—amounting to more than $20 million—to 8,400 employees who are also plantowners.

We owe a tremendous debt of gratitude to Senator LONG. The ESOP program is fair. It is forward looking. It is effective.

I fully support the program. I fully support the strengthening of it as it benefits its participants. But not only does it benefit its participants, it continues to enhance Federal revenues, it continues to enhance State revenues, and it does these things by keeping its employee owners working and paying taxes who might otherwise be a financial burden to our society.

I join again in thanking Senator LONG, and I urge our colleagues to vote unanimously to support this program.

Mr. SIMON. Madam President, will the minority leader yield?

Mr. BYRD. Yes, I yield to my friend from Illinois [Mr. SIMON].

Mr. SIMON. I simply join and associate myself with his remarks.

Yesterday on the floor I made a few remarks about ESOP and Senator LONG's contribution.

I think it is a tremendous program and a tremendous contribution.

If you walk down the streets even in New Orleans or Baton Rouge or Carbondale, IL, or a street in West Virginia, I do not think the average person would know anything about an ESOP. It is one of these things that is somewhat technical in nature and yet it just really does make a tremendous contribution to this Nation.

One of the great tributes we are going to pay RUSSELL LONG is not simply with words that we give here but in the years to come to make sure that we preserve, strengthen, enlarge, and enhance ESOP.

I think we are going to do it. I could not agree more with what the minority leader has to say.

I am proud to be serving just 2 years in the same body with RUSSELL LONG.

□ 1150

Mr. BYRD. Mr. President, I thank the very distinguished Senator from Illinois for his constructive and concisive remarks and comments. I am sure that all of us share his gratitude and admiration for our distinguished friend and colleague, Senator RUSSELL LONG.

Mr. PACKWOOD. Vote

The PRESIDING OFFICER. The question is on agreeing to division 1. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Idaho [Mr. SYMMS] is necessarily absent.

The PRESIDING OFFICER (Mr. GORTON). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 140 Leg.]

YEAS—99

Abdnor	DeConcini	Hart
Andrews	Denton	Hatch
Armstrong	Dixon	Hatfield
Baucus	Dodd	Hawkins
Bentsen	Dole	Hecht
Biden	Domenici	Heflin
Bingaman	Durenberger	Heinz
Boren	Eagleton	Helms
Boschwitz	East	Hollings
Bradley	Evans	Humphrey
Bumpers	Exon	Inouye
Burdick	Ford	Johnston
Byrd	Garn	Kassebaum
Chafee	Glenn	Kasten
Chiles	Goldwater	Kennedy
Cochran	Gore	Kerry
Cohen	Gorton	Lautenberg
Cranston	Gramm	Laxalt
D'Amato	Grassley	Leahy
Danforth	Harkin	Levin

Long	Nunn	Simon
Lugar	Packwood	Simpson
Mathias	Pell	Specter
Matsunaga	Pressler	Stafford
Mattingly	Proxmire	Stennis
McClure	Pryor	Stevens
McConnell	Quayle	Thurmond
Melcher	Riegle	Trible
Metzenbaum	Rockefeller	Wallop
Mitchell	Roth	Warner
Moynihan	Rudman	Weicker
Murkowski	Sarbanes	Wilson
Nickles	Sasser	Zorinsky

NOT VOTING—1

Symms

So division 1 was agreed to.

□ 1210

Mr. DOLE. I move to reconsider the vote by which the amendment was agreed to.

Mr. LONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senate will be in order.

Mr. DOLE. Mr. President, is there an amendment about to be offered?

Mr. DURENBERGER. No, not an amendment, but there are some comments I would like to make on the bill.

Mr. DOLE. I would say to all my colleagues, when amendments come up, if we can get a time agreement quickly, we can really move along. We are down to 90-some amendments now.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, let me first say that it feels pretty good to be one of 99 of my colleagues saluting the contributions that our esteemed colleague from Louisiana has made to the ownership of business enterprise in America through employee stock ownership plans.

Also let me say that I regret not being able to be on the floor earlier this morning during the discussion over the issue of the deductibility of State and local taxes.

A statement on State and local tax deductibility was introduced on my behalf. I was unable to attend this morning's discussion because I was involved in chairing nominations hearings in the Finance Committee at the time. Had I been able to be here, I would have expressed my concern, Mr. President, for the fact that in the amendment——

The PRESIDING OFFICER. Will the Senator suspend? The Senate is not in order. We cannot hear the Senator who is speaking.

The Senator from Minnesota.

Mr. DURENBERGER. I thank the Chair and I thank my colleagues as well.

Had I been here, I would have expressed first my concern about the fact that the amendment as offered and agreed to continues the basic point on discrimination in the bill against certain forms of State and local taxes. It was for that reason that I appreciated the colloquy that those who proposed the amendment entered into with the chairman of the Senate Finance Committee.

There has been a great deal of confusion on the part of a lot of people, including some of us on the Finance Committee, as to whether or not there was a policy being articulated in the Finance Committee bill on the issue of deductibility of State and local taxes and, if so, within that issue of deductibility whether or not there were a majority of members of the Finance Committee who favored discrimination against one or another form of taxation.

I appreciated very much the fact that the chairman of the Senate Finance Committee, to whom it has on occasion been attributed the discrimination in favor of income and property taxes and against sales taxes, had the opportunity during the course of that debate to indicate that the chairman of the Finance Committee, as Senator from a State which is selective in its utilization of tax sources and as a neighbor of a State which is also very selective in its use of tax resources, that it was his view, and hopefully as chairman of the conference committee that it was his view, that the public policy in this country is that the Federal income tax should not discriminate as against a source of State or local taxation.

In addition to that, Mr. President, I rise to remind my colleagues that we have debated over the last 10 days some relatively important issues. One of these issues was brought to us by our colleague from Ohio. In the course of that debate, it got us started on a course of changing one element of the tax bill before us that I think we do not really understand all the ramifications of. I am talking about the change in the threshold of deducting medical expenses.

There are a lot of statistics being thrown around. I will have a chart with statistics on it behind me only because, as I go through my concern with what the Finance Committee has done, we cannot keep people from charts. But I trust, Mr. President, that we in this room and others understand that behind the numbers we talk about in tax reform are real people.

I will begin my comments with the example of a young man by the name of Robert Davis and his young son Bobby.

Robert Davis is married and the father of two children, one of whom is 1 and the other is 6 years of age. Robert Davis is college educated. He is the sales manager for a computer company. He has a mortgage on a home in Severna Park, MD. Robert Davis is a middle-class American with what to most people appear to be the good life and a relatively secure future. All this would be true except that Bob Davis and his family live every day on the edge of a potential financial disaster due to the illness afflicting his son.

□ 1220

Robert Davis' son, Bobby, is 6 years old. He has a rare, life threatening form of epilepsy. With every seizure he has, little Bobby's brain function and nervous system are impaired. At 6 years of age, Bobby has had 35 seizures since he was 3 months old, and as as result, he now functions at the level of a 1-year-old child.

Little Bobby Davis goes to a special school to teach him skills he has lost as a result of seizures. His mother stays at home full-time to provide the constant care and training her son requires.

In addition to the emotional pain and suffering that his illness has caused Bobby Davis' family to bear, there is the constant fear of being financially bankrupted by the medical cost of treating these constant seizures.

The Robert Davis family is, as I said, a middle-class American family. Yet, because the employment-based insurance policy Mr. Davis has does not cover preexisting conditions such as the one his 6-year-old has, Bob Davis must pay a large proportion of his income for an additional health insurance policy and for uninsured, out-of-pocket, medical expenses.

In addition to his employer-based insurance, which covers his other family members, Bob Davis pays $460 a month for a health insurance policy for Bobby. The policy has a $2,000 deductible and limited, fixed payment benefits for episodes of illness.

Each of Bobby's illness episodes is expensive. He spends 2 to 4 days in the hospital each time in an intensive care unit. This costs the family between $1,200 and $1,600 per day. An extended stay in the hospital would financially ruin the family. They have no savings, no investments, no sheltered income. They would lose their home, their cars, and other assets, and, then, finally, after they were indigent, they would qualify for Medicaid and receive medical benefits under Maryland's Medicaid Program.

Currently, the Davis family receives some financial relief through the itemized medical deduction in the Federal Income Tax Code. Last year, the Davis family spent over $5,000 in itemized medical expenses, 6 percent of their gross income. This year, they anticipate itemized medical expenses equal to 8 percent of their gross income. This is a family struggling against barriers to health insurance access, and they are currently holding their own.

But, increasing the medical itemized expense threshold from 5 to 10 percent of adjusted gross income would be a catastrophe for the Davis family.

These medical expenses for their son's epilepsy treatments are not discretionary expenditures. This family cannot decide to spend less because their itemized deduction has been eliminated. By eliminating or reducing access to the itemized deduction, we are taking money out of the pocket of this family—a family which is already paying for a large part of the U.S. health care system through their taxes and employer-based insurance. They are paying for a medical system that they cannot use without paying even more for supplemental health insurance premiums, and paying 8 percent of their adjusted gross income in addition, out of their pockets, with after-tax dollars.

The economic cost of little Bobby's illness does not end there, however. There are many other costs that do not show up as health insurance premiums or itemized deductions. The Davis family spent $1,000 last year for diapers for their 6-year-old son. Mrs. Davis has no opportunity to work even part time. They must purchase equipment to prepare specially blended food for their son, and they have purchased a special vehicle to transport him to the hospital when he has a seizure, an event which has occurred once every 5 weeks for the past 5 years.

Mr. President, the situation facing the Davis family is not unique. Sixteen million American families spend 5 percent or more of their annual incomes on out-of-pocket medical expenses; 18 percent of these families are headed by someone over 64 years of age, in spite of the medicare benefits for which they are eligible.

For the elderly, spending on nursing home care represents the largest single out-of-pocket medical expense. These costs loom as an ever-present threat to the financial security of the elderly and their families. Studies indicate that a third of all elderly households would be improverished within 13 weeks if one member were forced to reside in a nursing home.

While current tax law provides some tax relief for seniors faced with large out-of-pocket expenses, raising the medical itemization deduction from 5 to 10 percent would cause many elderly an even greater financial burden than they already carry.

Consider the situation of an elderly couple with one member afflicted with Alzheimer's disease, no longer an uncommon situation. Victims of Alzheimer and may require some nursing home care off and on during the year. A typical elderly couple in this situation might have an adjusted gross income of $20,000 from pension, dividend, and interest income, and they could easily have $6,000 per year in out-of-pocket medical expenses for nursing home care.

Under current law, this couple can deduct $5,000 of the $6,000 they spend out of pocket.

Under the Senate Finance Committee tax bill, however, they could deduct only $4,000 of the $6,000 they spend for the nursing home care they need.

Comparing their actual Federal tax liability reveals how hard this elderly family would be hit:

Under current law, their tax liability would be $983.

But, under the Senate's tax bill, their tax liability would increase to $1,425, a 51-percent increase in their Federal taxes.

Mr. President, I think this is a cruel trick to play on the elderly of our country in the name of tax reform.

The Senate has achieved, in tax reform, a fairer and more equitable system of taxation for this Nation. But, this effort is not without flaws, as these two examples demonstrate.

In particular, I believe that the Senate Finance Committee erred in raising the threshold of out-of-pocket expenditures for medical expenses which qualify for a deduction.

It is for that reason that many of us supported an amendment proposed by the Senator from Ohio [Mr. METZENBAUM] earlier this week to move us back in the direction of current law on the medical deduction. He got us to 9 percent, as I understand it, and I trust the conference will head us as close to 5 as we can get.

Under current law, and the House version of H.R. 3838, taxpayers can deduct out-of-pocket medical expenses for themselves, their spouse, and dependents, above 5 percent of adjusted gross income. But, the Senate tax reform bill raises that threshold for the deduction to 10 percent of adjusted gross income.

I feel strongly that Senate conferees should agree with the House on this issue.

In taking this position, I understand that the Senate tax reform bill represents a trade off between special tax treatment for certain private spending decisions and simply putting more money in the pockets of individual taxpayers.

But, the advantage of providing Americans greater choice in allocating their resources is not relevant to the realities of involuntary medical expenses—of an extraordinary nature—which come as the result of catastrophic illness or diability.

One need simply look at the consequences of this change in the deduction for health expenses for one American family to realize its importance.

A recent study released by the National Center for Health Services Research indicates that 16 million—or 20 percent of all American families—have out-of-pocket medical expenses greater than 5 percent of family income. Eleven million of these families now receive relief from taxes through the tax deduction. I should note that the lions' share is the middle-income families whose lives might be ruined without that relief.

□ 1230

Over 75 percent, Mr. President, of the people taking this particular deduction now, that is, a limitation of 5 percent of adjusted gross income—meaning you have to have more than 5 percent of your income going into medical expenses—75 percent of those people are in low- or middle-income categories. Forty-six percent are in the middle-income category, from $20,000 to $40,000 a year.

These are not expenses which taxpayers or their families can control. And, moving the threshold for their deduction will bring them even greater hardship. This is a point made by the statistics on a second chart I have which indicates that 11 million American families now come under the 5-percent threshold, but only 7 million would meet the test at 10 percent in the tax bill. That means 4 million American families will lose the deduction under this change. But, worst of all, the actual dollars in tax relief for those still able to take the deduction at 10 percent will be greatly decreased. Whereas, under current law, total tax relief is $3.7 billion next year, under the Senate tax reform bill it will drop to $1.9 billion—a loss to those 4 million families as well as the 7 million still receiving the tax break of $1.8 billion.

Mr. President, tax reform is meant to free up the economic potential of the American taxpayer, not place additional burdens on a 6-year old still in diapers or on his family.

I suggest that the health deduction should not be tampered with in this tax reform process, and am hopeful that my colleagues, the Senate conferees will restore this inequity in negotiations with our colleagues from the House.

Mr. President, our distinguished chairman, BOB PACKWOOD, more than any other Member of Congress, has stood by the tax treatment of health benefits which provide an incentive for employer-based health insurance. The importance of health plan membership is unquestioned.

But for those whose health insurance does not cover extraordinary out-of-pocket expenses, or for those who lack insurance—37 million Americans—this deduction is a lifeline which helps protect the financial stability of their families.

I strongly believe Mr. President, the 5-percent threshold must be maintained, and I am confident that the tax bill which ultimately emerges from conference committee will main-

tain that threshold which is so essential to so many American families.

Mr. ZORINSKY. Mr. President, I intend to offer an amendment to close an egregious loophole that has existed in the Tax Code since 1976. This loophole enables large farming corporations with annual sales of a billion dollars or more to take advantage of an accounting technique intended solely for small family farmers.

In 1976, Congress determined that farming corporations should report their income under the accrual accounting method. This method more accurately reflects income because it matches the expenses of raising crops or animals with the income that is realized when those crops or animals are sold. Because the accrual method requires some amount of skilled accounting assistance, however, Congress recognized that it would be fairest to exempt small operations and family-owned farms from the requirement. Accordingly, these taxpayers were permitted to remain on the cash accounting method.

Unfortunately, a number of large agricultural corporations have been able to fashion their corporate structures to fit within the literal language of the exception. The unintended result is that these conglomerates are entitled to employ the cash method of accounting and in effect receive a tax-free loan from America's taxpayers—including the small family farmers this provision was designed to benefit.

These large corporations, through manipulation of the cash method, have in many instances been able to defer all of their Federal taxes. Under cash accounting, an agricultural corporation can deduct its expenses as the crops or animals are raised, and recognize its income only later when they are sold. When it comes time to recognize the income, these corporations simply expand their production, thereby generating enough new deductions to offset the income. Because cash accounting encourages overproduction in this way, it drives down the market prices of the farm commodities these large corporations produce. The most troubling aspect of the loophole is that this price depression strikes directly at the small farmer—the individual Congress intended to help, not hurt, with this provision.

There is another aspect of this that troubles me. One of the fundamental concepts of this tax bill has been the idea that business should be able to compete on a level playing field. If we fail to close this loophole, however, we will be sending the message to American businessmen that although we like the concept of a level playing field as a theoretical matter, we are not prepared to put it into practice. We will be sending a message that if you are large and powerful, you need not worry about being required to operate on a level playing field. We will be sending a message that, if you are large and powerful, you can expect to keep your special rules. We will be sending a message that if you are not large and powerful, beware; we will take away your special rule. Keep in mind that only a handful of agricultural corporations are able to take advantage of the loophole I have described. The rest of their competitors must play by the rules of accrual accounting. Surely this kind of competitive advantage for the large and powerful is not the result we sought when we determined to reform the tax laws of this country.

A lot has been said about the fairness and integrity of this bill and about the willingness of this Senate to do the right thing. It would be unfortunate if we were to undermine this support by turning away from America's small farmers and blinking our eyes at this egregious loophole.

Mr. President, I believe the distinguished chairman knows that I view this issue as a serious one. I am extremely disappointed that the Tax Code, as revised by the Senate's tax reform bill, would continue to allow a handful of billion-dollar corporations to benefit from a special rule designed to help small traditional family farms.

□ 1240

Nevertheless, I understand that the distinguished chairman is committed to tax reform and that he firmly believes the cause of tax reform will be best served if we adopt the Finance Committee bill without a great deal of amendment.

I would like to refer briefly to an article in a recent journal concerning the illustration of the existence of this current law. Actually, it classifies some corporations, many of which exceed $100 million in gross annual sales. Because they are owned by a family or an individual, they list them under family farms. Since they are a family farm under that definition, they are allowed to utilize the cash accounting system.

Most reasonable observers would not call Hudson Foods a family farm. It is based in Rogers, AR. It is the country's 17th largest poultry producer. In the fiscal year that ended last September 28, Hudson earned $85 million on sales of $185 million. It went public in February, raising $21.3 million.

This is not exactly your basic family farm. The Internal Revenue Service, not always a reasonable observer, does think so, and as a result, Hudson was able to defer $7.6 million, its entire Federal tax bill, last year under long-standing IRS rules. Deferral can be rolled over more or less indefinitely.

Hudson is not a fluke. It is done by the law. Other agri-industrial complexes, including $1.1 billion—in sales—Tyson Foods and privately held Perdue Farms, whose estimated sales are $74 million annually, also routinely receive tax breaks originally intended for family farms.

How do they do this? I quote from an article by Ruth Simon, entitled "Fun and Games with Chicken Feed."

By qualifying under some rather arcane rules that allow "family farms" to use cash accounting instead of the accrual accounting the IRS requires most companies to use when computing taxable income. The rules date from 1919, when the Treasury concluded farmers weren't sophisticated enough to use accrual accounting and said they could use cash accounting instead. Big farmers didn't abuse the provisions, because taxes were low. Besides, there weren't many big farms.

The choice of cash or accural is especially important for livestock farmers because such production costs as feed are incurred well before the livestock is sold.

Consider a chicken farmer. Accrual accounting would require him to report a portion of his feed inventories at the end of each year, while not permitting him to expense the feed until the bird was actually sold. The theory is that the feed is an integral part of the cost of producing the bird. Accrual accounting says income and expenses should be matched, so feed costs should not be deducted until revenue is received.

Cash accounting, in contrast, allows the farmer to report cash expenses and receipts when they actually occur. That means the farmer can immediately deduct the feed as an expense, but he doesn't have to report the chickens as income until they are sold. Expensing in the current period while deferring income to a later period amounts to a tax-free loan to the farmer from the Treasury. The bigger and more profitable the farm, the larger that tax-free loan tends to be.

Mr. President, there are many theories concerning what happens to the chicken business in the event that cash accounting is taken away from these huge businesses, businesses in excess of $100 million annual sales. Well, I still believe in free enterprise, and I say that if there is a demand for chickens, somebody will produce chickens, whether it be a huge conglomerate using cash accounting or a huge corporation using accrual accounting. But the fact remains that as long as human beings consume chickens, someone will sell chickens.

The argument that the chicken industry will be completely devastated and completely destroyed, and that thousands of chicken farmers who depend on the conglomerate granddaddy in providing chicken feed will completely disappear, under the cash accounting system, is a falsified argument.

To begin with, the smaller chicken farmers who depend on the big chicken man to buy the feed under cash accounting will be able to take cash accounting for themselves, if they are owned by an individual who owns over 51 percent of the company, under current tax law.

There is something wrong about saying that an individual who sells in excess of $100 million worth annually of chicken sales is a family farmer. This is not the intent of the 1919 bill, and I do not think it should be continued in current tax law.

However, I understand that in this particular legislation we are talking about on the floor, which is the tax reform package, it comes once in a long lifetime. I think it is very important to this country.

Various coalitions have built up in this body, which I am afraid does not afford an equal opportunity for legislation of this type to be considered adequately. For example, right away you buck up against 20 individuals known as the Finance Committee, who have a pact to avoid any type of amendments which may develop to be controversial.

I do know that many of my colleagues in this body are deeply involved in their States with chicken farmers, and I know that many States have chicken people who use cash accounting, and many States have chicken people who use accrual accounting. The differential between the two does create an inequity and an unequal playing field in the business environment.

I think we will have to come to grips with it one day on the floor of the Senate. Unfortunately, I do not think today is the day. I do not think this particular tax reform package is the place to do it, because there are too many bonds that have been created in order to preserve a very fragilly constructed package. I would have liked to offer this in companionship as an offset to some piece of legislation so that it could go as a package.

□ 1250

Unfortunately, this will be freestanding. Maybe it is not unfortunate, because it would just accrue to the Treasury of the United States and help reduce the deficit of this Nation. I will introduce this hopefully at a later time this year on a different piece of legislation.

But since there are these alliances built throughout this body that will vote against this type of legislation, regardless of the merit of this legislation, I feel at a future date we will have a better chance and the better ability for understanding within this body as to the inequities that are created by labeling someone who does over $100 million in business as a family farmer under an antiquated law which enables him to borrow money theoretically from the Federal Government at no interest while the taxpayers of this country have to pick up the differential.

So in that regard I inform the distinguished chairman of the Finance Committee that due to my high regard for him and my appreciation for his efforts in attempting to get this bill through the Senate, whether we finish it this week or next week, I do not want to add to the animosity that does exist within this Chamber in various areas to highten the emotion and the tensions by bringing this amendment at this particular time. Therefore, I will not offer my amendment on the tax reform package.

But I would say this, Mr. President: I think more will be said about this in the future. I think many people misunderstand what this does in creating inequities in the marketplace in addition to what financial obligations the taxpayers have to assume to make up the differential.

Just as an illustration, if this were to pass at the $100 million threshold, in other words if we called everybody who grosses under $100 million in chicken sales annually as family farmers, and eliminate the ones over $100 million sales, this would save $500 million over the next 5 years for the taxpayers of America. That is what the Joint Committee on Taxation gave us as a cost differential when we made the request.

If we took that threshold down to $50 million and said you are a family farmer if you are under $50 million, this would then save $700 million over a 5-year period. If we took it down to $10 million—many farmers today, let me tell you, in my State of Nebraska think someone that does over $10 million sales annually in farming is in the big league. I happen to agree with those people that someone who does over $10 million today in farming is in the big league if they sell more than $10 million gross sales. If we had this threshold in this legislation, it would then save the taxpayers $900 million over a period of 5 years.

With that, I thank you very much, Mr. President, and I relinquish the floor.

Mr. BRADLEY. Mr. President, let me thank the distinguished Senator from Nebraska for his very persuasive case. I personally agree with his views about cash accounting and particularly cash accounting by very large farms as opposed to the small family farm.

I know the Senator is strongly committed to defending the family farm and is an extremely effective advocate. Indeed, he is a member of the Agriculture Committee. I assume we will have his continued advocacy.

I also appreciate his willingness not to offer the amendment on this bill.

Mr. ZORINSKY. I thank the Senator.

Mr. BRADLEY. Mr. President, I suggest the absence of a quorum. I withhold.

Mr. LEVIN. Mr. President, is there a pending amendment?

The PRESIDING OFFICER. Other than the committee amendment, there is no amendment pending.

Mr. LEVIN. Mr. President, I wonder if I could ask my friend from New Jersey a question about the deduction of the interest on consumer loans.

We have a rather unique situation in this bill now which is that the interest on consumer loans is not deductible. That is the way the committee report starts out. It just makes a flat statement that consumer interest is not deductible. But then we find out that there is an exception to that rule that in fact if the loan is secured by a home, then the interest on the loan is in fact deductible, which creates an anomaly, an unusual situation.

My friend from New Jersey has a very keen sense of justice. I do not have to give him a sermon on treating people equally who are in the same position. Indeed, this is one of the hallmarks of the bill which my friend has been so involved in creating.

Take three people who live in three homes side by side. You have family A. They live in a home and they have been there a long time. They built up some equity in that home. Let us say they have $10,000 or more in equity in that home. Family B lives in the same home exactly next door. It is precisely the same home. They have the same income, but they just moved into that home. They do not have any equity built up. They put a few thousand dollars down and their total equity might be $2,000. And then you have family C that lives in the third house on that block, same style home, same income, but they rent the home. They are renters.

Now, family A can buy a car and all they have to do is give a second mortgage on the home to the finance company for that car, and they are in a position where they can then deduct the interest. They do not even have to refinance the home. All they have to do is give a second mortgage and have it recorded, as I understand the language in the bill. Family B, the same income, same home, cannot do it because their equity is not enough. They cannot deduct the interest on that car loan. Family C rents. They cannot deduct the interest either, although they have the same income, the same home.

So we treat them differently, although I think we should treat them the same by any sense of justice. There is no reason that I can think of at least that has been offered yet on this floor as to why it is that we would allow one family to deduct the interest on an education loan, for instance, just because they happen to have equity in their home, whereas another family that has a smaller amount of equity could not deduct the interest on the education loan and a renter cannot

deduct the interest on an education loan.

I wonder whether or not the Senator can give us the logic behind this, if there is any, and if there is not whether or not there is going to be an effort to correct this in the conference with the House of Representatives.

Mr. BRADLEY. Mr. President, let me say to my distinguished friend from Michigan, who I know is a champion of justice and equity in all aspects of Federal policy, that I think that his concern demonstrates some of the conflicting results when you do a tax reform bill of this dimension. The conflict is between the apparent inequity that he described between someone who rents and someone who owns a home, and the desire to keep the home almost inviolate in thinking through this tax reform bill, this debate we had on the floor a couple days ago when there was an attempt to modify the provision on the refinancing of a home so that you could only use the proceeds for any refinancing for a home-related addition, improvements, or for medical or education.

The problem that you run into there is the problem of the family who is lower middle income, who has no stocks, no bonds, no financial assets and whose only equity is in a home. It was felt by the committee and I think by the Senate during the debate that that family ought to have the right if it chooses in a moment of emergency to refinance, use the proceeds in any way that they choose, and continue to get the tax deduction for the interest.

For example, one of the hypothetical circumstances was a mother and a father who have a son or a daughter who is trying to buy their first home and who cannot make the down payment.

□ 1300

The family then refinances, ups their mortgage from maybe $60,000 to $70,000, gives $10,000 to their son or daughter. It was felt that to come into that family's personal affairs as it relates to their home and ability to refinance and say, "No, you can't do that; we in the Federal Government limit it only to specific kinds of uses of that additional cash from the refinancing" was not really a proper way to go.

In fact, one Senator characterized the home as "the home is your castle" and this is a kind of imposition and violation of my right to do whatever I want with my home.

Mr. LEVIN. That is not the issue. No one suggested that that is a solution.

Mr. BRADLEY. No; I am explaining the conflict. The ideal situation is you have eliminated consumer interest and, therefore, you want to close every possible loophole that consumer interest might flow through, a consumer interestlike deduction.

That ran headlong into the desire on the part of the committee to protect the feeling most Americans have which is the home is your castle. And in the battle between those two conflicting objectives, the result was that you deny consumer interest deductions but you do not deny the right of a family to refinance for whatever circumstances they choose, whether it be to finance the downpayment on a child's home or problems with their parents in need for cash or small business crisis or whatever.

I am the first to admit to the Senator that that is not an airtight elimination of the deduction.

Mr. LEVIN. Or an equitable one. Is it an equitable one?

Mr. BRADLEY. I would also concede to the Senator the renters would have a greater problem because they do not have equity in their home.

Mr. LEVIN. Is it equitable that somebody who rents a home cannot deduct the interest on an education loan, while somebody who owns a home can? What is the logic? What is the relevance?

Your answer is, Well, heck, we have got to protect that home. I am not arguing with that. I am not suggesting that we open up family life and look at the proceeds of a mortgage. That is not the issue.

The issue is whether or not you eliminate the deduction of interest on that education loan for the person who has only a little equity in their home and whether or not you eliminate the deduction of the interest on an education loan, for instance, of a renter. That is the issue that you have not faced. You cannot duck that by saying, "Well, gee, we can't eliminate it for the homeowner with big equity. There is no way to do that fairly." Of course, there is no way to do that fairly. Let us protect that home. I have no problem with that.

The question you have to face is where it leaves you, because you are not allowing the same deduction for people who have little equity in their home or for the renter. It is completely illogical.

There is no reason why we should say the interest on an education loan taken out by somebody with little equity in their home should not be deductible, while somebody with big equity in their home should have interest deducted. There is no logic to that. It is a strawman argument to tell us why the person with big equity should be able to deduct that interest.

I agree 100 percent that that person should be able to deduct interest. But why should not those others be able to deduct the interest equally?

You say equality and fairness is the hallmark of this bill, and there is a very deep flaw when you are dealing with people with little equity in their home who are trying to borrow money to get a kid through college and with a renter who is trying to borrow money to get a kid through college.

You tell those people, "Hey, sorry, you can't deduct the interest. You can't deduct that." But the person next door who owns the house, they can deduct the interest on the unrelated education because you are afraid of violating the sanctity of their home. I could not agree with you more about not violating the sanctity of their home.

Mr. BRADLEY. Let me respond to the Senator to say that the whole intent of the committee was to protect the right of the family with a small equity in their home if they chose to refinance and be able to use that money in any way they would like.

Now, the Senator said——

Mr. LEVIN. I gave you the situation where the family has a $5,000 equity in the home they are in now. They have a $5,000 equity and they are going to buy a car—a car; nothing to do with a home. With a $5,000 equity, if it is a $10,000 car, you cannot deduct the interest on that car loan. "Sorry. You only got $5,000 equity in your home."

The person says, "So what? My neighbor can deduct the interest on the car loan."

And your answer to him is, "But he has got a $10,000 equity in his house," to which the person has got to scratch his head and say, "What does that have to do with anything?"

Mr. BRADLEY. The person with the small equity might choose to refinance and increase their mortgage.

Mr. LEVIN. I say the equity is $5,000. You cannot refinance and pick up more than $5,000. There is only a $5,000 equity and there is a $10,000 car, so that person cannot borrow $10,000 more and deduct the interest on that car payment.

Mr. BRADLEY. It is true, I say to the Senator, that different homes have different values. And if you are going to protect the right of anyone, along the lines of a home is your castle, to refinance, someone who has a more valuable home would be able to refinance at a higher amount.

Let me point out to the Senator, when it comes to renters, the fact of the matter is that most renters do not itemize. The fact of the matter is you have 64 million people out there that do not itemize. Now many, many, many of them are renters. Many of them will also benefit from the lower tax rates that are in this bill. Most of them will particularly benefit from the increased exemption and the increased standard deduction.

Mr. LEVIN. What does that have to do with the inequity I am raising? The inequity I am raising is that that renter in that same home with that same income is not able to deduct the

interest on a car loan or on an education loan. It is illogical to say, "But that renter is maybe going to benefit from other provisions in the code."

What I am saying is that renter cannot deduct interest on the same are loan as his neighbor can deduct the interest on because his neighbor happens to have a $10,000 equity.

Then I gave you the third situation which you have not answered at all, which is the home with only $5,000 in equity. Now, sure, he can refinance the home, but he does not get enough for the car. So, therefore, he has to borrow money and his interest is not deductible.

I think it is useful for the committee to acknowledge there is an injustice here that has been created and it would be your efforts to cure this in conference rather than to try to talk about other provisions in the Tax Code.

I mean there is a total illogic and a total disconnect here, as far as I can see.

Mr. BRADLEY. Well, let me say to the distinguished Senator that I appreciate his concern. If you were going to carry it to one logical conclusion or the other, it would be to go with his position, which is to allow consumer interest——

Mr. LEVIN. For all or none.

Mr. BRADLEY. For everyone, or to close it off for everyone. And in order to close it off, what I am trying to explain——

Mr. LEVIN. I am not suggesting you close it off. I am saying allow it for everyone.

Mr. BRADLEY. No; you have a choice. Your position is you allow it for everyone. The position of the committee is you do not violate the right of a homeowner to refinance their home and use the proceeds in any way that they choose. Those are two different ways of answering that question.

The Senator is asking me if the conference will restore this question to some kind of equity as he perceives it. And your equity would be achieved only if you allow consumer interest for everyone, as I understand it.

I think that if you were admitting there is another logical position, which is you allow consumer interest for no one, I think——

Mr. LEVIN. Unless. No; it is not no one. It is not no one.

Mr. BRADLEY. Consumer interest for no one.

Mr. LEVIN. Unless.

Mr. BRADLEY. And that means plugging up the ability to refinance based upon the equity of your home.

I am saying to the Senator, I understand his conflict. The committee came out with a bill that I think went halfway, or three-quarters of the way. Again, I point out to the Senator that most renters do not itemize. I would simply say that the overall effect of the bill cannot be discounted.

But let me tell you that I am sympathetic to your case and my sense is that this would clearly be an issue in conference.

Mr. LEVIN. Let us assume for the moment——

Mr. CHAFEE addressed the Chair.

Mr. LEVIN. Mr. President, if I could just pursue one additional question.

Let us assume that 20 percent or 30 percent of the renters itemize and 50 percent of the homeowners itemize. Now, you are left in an unusual situation that 30 percent of the people who have just as much claim to deduct the interest on a consumer loan as a person who owns the home, just as much claim in justice, are denied that deduction in this bill.

□ 1310

Now, you can say that it is only a minority of renters who are treated unjustly; that only maybe 30 percent of the renters who are treated unjustly, or whatever number, itemize. That is a pretty significant number.

Mr. BRADLEY. Will the Senator yield? I know the Senator from Rhode Island wants to get into a colloquy, and I will yield to him to get into this in a second. We cannot take any open exclusion, deduction, or credit and assert that if you lose this deduction, credit, or exclusion, if you lose consumer interest, somehow or another this whole bill can be characterized as unjust or inequitable.

Mr. LEVIN. I did not say that. I characterized this provision.

Mr. BRADLEY. My point is you cannot view this provision in isolation. You have to view this provision as part of the total fabric of the bill which, as the Senator knows, makes major strides forward, particularly as this Senator is concerned about.

Mr. LEVIN. I am happy to yield to my friend from Rhode Island.

Mr. CHAFEE. Mr. President, the point I would make here is when we did this bill, we had to make choices. The choice that all Americans want, like motherhood and apple pie, is the deductibility for the interest on their home loans. I do not think the Senator from Michigan is suggesting we do not have that.

Mr. LEVIN. That is right.

Mr. CHAFEE. It has been in the code since 1913. There is no point in suggesting we will take it out. Indeed, in Treasury 1, the President did not have it there. There is a firestorm across the Nation of objections to that by homebuilders, realtors, homeowners, all the itemizers in the Nation and the nonitemizers just as well because they look forward to the day. And I think it is right to have it.

Mr. LEVIN. So do I.

Mr. CHAFEE. That is one other factor that has caused the United States to have the highest percentage of individual homeowners in the world.

Then we get to the next part. What about the deductibility of the interest on consumer goods, and consumer interest? That is what the Senator from Michigan is concerned about. He says there is a dichotomy here. The person who has the home may deduct the interest on his mortgage. If he wants to go out and buy a boat or an automobile, he can increase the mortgage on his home and therefore interest on that is deductible. And the fellow who does not have enough equity in his home cannot receive the deductibility of his interest. Fair enough. We looked at that.

What did we find? In order to have the deductibility of consumer interest it would cost $28 billion over the 5-year period. What is the result of that? The result of that would be rates would have to be increased, and so we made a decision. The decision was we would not allow the deductibility of consumer interest. Was it totally fair? We thought it was a good tradeoff, a wise tradeoff, and to get the rates down. The driving engine of this entire bill is the hold rates for individuals and corporations.

Mr. LEVIN. I wonder if my friend might answer a question on that.

Mr. CHAFEE. Sure. I would like to conclude one statement.

President Kennedy said "The world isn't totally fair." That is a fact. If you look at it this way, maybe it is not totally fair. The fellow who goes out and has $5,000 equity in his home, I question whether he is buying a $10,000 automobile. But nonetheless, maybe that is the way he wants to run his affairs. In that case, he does not as the Senator pointed out get the deductibility on the interest on his mortgage. Here is another point we took up.

You know in this bill you get deductibility on the mortgage and not only on your principal home but another home. I thought that is going too far. Certainly for the first home, that is motherhood, that is God Bless America. But the second home I do not think is quite necessary. So I proposed deductibility of the interest on the original principal residence; no question that is right. That is good. But why in the world should we have deductibility of interest on another home? Why not take that money, what you gain by ceasing that, ending that provision in our bill, and set that money aside for the individual to have at least up to that amount of deductible interest? Looking at the total there was not much there. The estimates showed us that we come up with something like $500 an individual, if you allow them the deductibility for all consumer interest in lieu of the second home. Therefore, we felt it was so tiny

that it was not worth going ahead with it.

Mr. LEVIN. Getting back to the point of my question, what it comes down to is that the reason you have this anomaly that is going to be created if this bill passes and the conference adopts it is to raise revenue from these folks who have low equity in their homes or who are renting. The bottom line is you are trying to raise some revenue from them. You are raising it in an unjust way because there is no logical reason to treat those three families differently on their consumer loans. There is no logical reason to treat those three American families differently on their consumer loans. There is only a practicality; that is, you had to raise some revenue from those folks. That is why we are treating them differently. In my book, that is why we are treating them unjustly.

No one is talking about that first family and saying they cannot deduct the interest on their home mortgage or they cannot refinance. That is not the issue. We should focus on the issue. The issue is that once we decide to protect that, and I happen to concur totally in that decision, there is no logic, there is no justice in telling the family next door that has not owned this home as long and therefore has less equity when it comes to financing an education loan or an education for their kids they will not be able to deduct the interest on that loan. And that has to leave them scratching their heads and saying, "What does that have to do with how much equity I have on the home, whether or not I can deduct the interest on a consumer loan to get a kid through college?" There is no logical connection in that result. The only reason you are doing it is because you want to raise some revenue so you can reduce some rates. That is the reason we are perpetrating this injustice. I think that is what it clearly comes down to.

I have one specific question also for either one of my friends; that is this: The committee made an assumption as to the percentage of consumer loans that would be secured by real estate. In order to reach a certain number as to how much money this would raise you had to make a certain assumption, that 10 percent of consumer loans on education, autos, or whatever, would be secured by a second, third, fourth, fifth, sixth mortgage on a home, whatever, or that 20 percent of those loans would be secured at 30 percent. There had to be some assumption made in that regard.

I am wondering whether either of my friends are in a position to tell me how that assumption is and how it was reached.

Mr. BRADLEY. Let me respond to the distinguished Senator by saying that the assumptions are in a computer model of the Joint Tax Committee. Frankly, I am not a software expert. I do not know what these assumptions are. They have formulas for all aspects of the Tax Code, and its interaction with the economy. That is what the computer spewed out.

Mr. LEVIN. What was the conclusion of the computer, 10 percent of consumers loans would be added onto, rolled into existing mortgages, 20 percent, 30 percent?

Mr. BRADLEY. I say to the Senator I do not have that number right now. We can see if we can get it. I would like to see it. I think on one level the Senator has an accurate concern about the abstract equity, consistency, and logic of the bill that we are enacting, whether we should have all consumer interest, whether we should have part, whether we can refinance the home, spend the money and still deduct the interest. I understand that.

What I want to try to do is to reassure. Keep in mind the family that we are talking about, and that we are concerned about—the family that makes under $30,000 in income. This is the family that will probably have a mortgage, own a home, and have a mortgage with probably 10, or 15 years left. They do not make a lot of consumer purchases. One of the studies actually that I see by the UAW characterized a typical family's expenditures. And they described that family as buying a new suit for father once every 2 or 3 years, two to three dresses for the mother every 4 years, a refrigerator every 10 years, a television every 15 years, and what do those facts reveal? They reveal that the family does not buy a whole lot, and they do not have a lot of consumer interest.

Mr. LEVIN. Or credit cards.

Mr. BRADLEY. Or credit cards. Also, if you combine the fact that the family does not have a lot of consumer interest with the fact the great majority of families in that position do not even intemize, you are then left with, well, do you eliminate the consumer interest deduction even if it is 90 percent eliminated or 80 percent eliminated, given what the Senator said about the ability to refinance?

□ 1320

If you say that, no, you are not going to do that, you come up with the $10 to $26 million. My concern is once you do that, you are then in a situation of lowering the exemption, lowering the standard deduction, and the family that you are trying to help will end up being hurt by this very process.

What I am trying to do is to try to reassure the Senator that as it affects that real life family out there as opposed to the hypothetical situation the Senator has developed or as opposed to an abstract interest in the equity in all individual aspects of the Tax Code, he should be reassured.

Let me also say to the Senator that the rationale for disallowing consumer interest deduction was a basic one. What the country needs is greater savings. As a result of the greater savings, you will have a drop in interest rates.

So you have a basic macroeconomic rationale for this, and you have at least the Senator's concerns already considered by the committee in its enactment of the bill.

Mr. LEVIN. I thank both my friends. Let me assure you that the families I have described are not theoretical. They are real. These are real people. Families that earn $30,000 do borrow money for a car; they do borrow money for a kid's education. They do have money owing to credit card companies that they are paying interest on. Those are real, live families. When it comes down to finding out that with this bill, if passed in its present form, that a person next door who happened to have lived there longer can deduct that interest, but they will only have a $5,000 equity, I am telling you that there will be a keen and accurate sense of injustice in this country. It cannot be corrected. It would be corrected by treating everybody who has interest that they are paying on consumer loans the same, whether or not they have big equity in their homes, little equity or rental. We have to treat people the same.

This provision in the bill is not just or logical.

I do thank my friend for engaging in this colloquy. It has been enlightening to me.

I also appreciate the conclusion which your software reached in that computer as to the percentage of consumer debt or consumer loans, either one, which will be deductible, or the interest will be deductible. There is a percentage where it will not be. You had to have some kind of conclusion when you reach $28 billion. That is based on a conclusion that 20 percent, 30 percent, or 40 percent of those people will fold those loans into their mortgage, whatever percentage it is. I would appreciate those percentages.

Mr. BRADLEY. I will say I will certainly try to obtain those numbers for the Senator.

Getting back to his conclusion on a family with $5,000 equity and a family with $10,000 equity and where they might finance with the family having $10,000 in equity having a somewhat better deal, let me say in that same neighborhood today I think there is an outrage about the tax system that treats equal incomes differently. One family can be earning $25,000 and the family that is in the first home will be earning $25,000 and they can pay dramatically different taxes.

I will say to the Senator I was in New Jersey on a talk show one afternoon and a person called up and said

the tax reform sounded good. I asked, "Why?"

The person said, "I pay an effective tax rate of 38 percent. My next door neighbor, who makes the same income I do, pays an effective tax rate of 6 percent and he thinks I am stupid because I do not want to spend all of my time figuring out how to avoid paying taxes."

He then went on and said, "But I am a chemist. I like doing what I do best in the laboratory. If we have a system where equal incomes pay equal tax, I can do that."

My only point is to say to the Senator who is concerned about equity that the biggest inequity that we have in the tax system today is that people making the same amount of income do not pay the same tax. That brings disrespect for Government and I think disrespect for the Democratic Party.

Mr. LEVIN. The whole point of this colloquy is to show that people with the same incomes will pay different taxes under this bill. In my situation, houses A, B, and C, they all have the same income but they will pay different taxes because you allow the house with big equity to deduct the interest but you do not allow the house with little equity to deduct interest, speaking about the consumer loans, and you are not allowing the renter to deduct.

You are violating your own rule, which is people with the same amount of income should pay the same tax. This provision reaches exactly the opposite on consumer loans, where one is deductible and the other is not.

Mr. BRADLEY. Let me say finally to the Senator, and he may like to respond, a lot of the people you are concerned about, the income class you mentioned, now are in the high rate of 28 percent. They will be in a lower rate. My only point is we have to look at the total picture.

I will try to get the Senator's numbers for him. I respect his concern.

Mr. LEVIN. Again, I thank my friend from New Jersey and Rhode Island for participating.

Mr. CHAFEE. Let me make one other point, Mr. President. One solution would be to allow everyone a lump sum for everything, and they could use it however they want, for loans, for homes, consumer goods, whatever they want. That is a possibility. That was suggested and rejected.

There is the feeling that the viability of the home mortgage interest deduction is so ensconced in our code and the American ethic, and I believe rightfully so. I think it is a major factor for people to own their own homes, which I believe is good for the country.

Mr. LEVIN. I could not agree more.

Mr. CHAFEE. So that got rejected. Then there comes the other possibility, about the consumer interest rate, and you get so high on the rate you lose the purpose of the bill.

Maybe it is as the Senator from Michigan is suggesting, unfair.

All I can say is I personally believe that the primary objective of achieving the lower rates is a worthwhile goal and, fortunately, we have achieved it here.

I will finally point out that when you are at the 15 percent tax rate, the value of the deductibility of the interest is greatly increased, if that is any solace.

Mr. LEVIN. I think it is clear that we have to keep the low rates. My point is that there are a number of ways that create injustices to get there. This is one of them.

Mr. CHAFEE. I find the word "injustice" a little too strong.

Mr. LEVIN. But realize the price we are paying to get to those low rates. We are paying a very important price. In this case it is injustice, not a strong word, to describe a situation where you have three people with the same income and the same households, some of whom can deduct interest on an education loan and some who cannot.

□ 1330

That is not too strong a word for that. I think it is an accurate word. It is a moderate word, but I think it is also an accurate word, the point being that to get to those lower rates, we are paying some prices. One of the prices here is a very unequal and unfair conclusion.

Again, I thank my friend from Rhode Island.

Mr. CHAFEE. Mr. President, I am not quite willing to concede the work "injustice," because the very facts the Senators present, three people with the same income, side by side. There is the capability certainly in existence for them to pay down their mortgage if they so choose. Obviously, they have the same income. You can say some person has had his house for 20 years, the other person just moved to town, the price of real estate is high—yes, you can choose all kinds of examples. But I think under the circumstances the Senator outlines, probably the people would end up in about the same situation, borrowing on the equity loan.

Mr. LEVIN. Mr. President, I yield the floor.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PACKWOOD. Mr. President, I am looking at the list of amendments that the majority and minority leaders put together last night. I realize all of these will not be offered. Senator LONG and I are sitting here waiting as managers of the bill for the majority and the minority to vote on amendments. The longer we wait, I think the more negative the attitude of Senator LONG and myself might become about the amendments.

I shall not read the names, but I shall go down the list and give an idea: Subsidiary dividends; change the definition of a guzzler to unloaded weight; no use of tax revenues for deficit reduction; unitary taxes; exempt foreign insurance reserves from the minimum tax; ESOP amendment—that is a different ESOP amendment; potash; indexing capital gains; write down farm loans; Anchorage pension—and so on and so forth.

Mr. President, we are prepared to deal with all these. We would like to deal with them, vote them up or down. Maybe some are acceptable, though we are not accepting transition amendments. If someone gives us a package of those, we will take them to conference. We have yet to see a transition request that is not conferenceable. But we are prepared to consider those amendments and deal with them if Senators would bring them to the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. BYRD. Mr. President, there is no amendment pending, is there?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. If there is no amendment pending, I ask to speak out of order.

If any Senator comes to the floor and wishes to have the floor to call up an amendment, I shall be very happy to yield the floor for that purpose.

If there is a Senator who wishes to have the floor or wishes to come to the floor with an amendment, I say again I shall be glad to yield for that purpose because it is important, I think, that progress be made on the bill. But if there is no Senator seeking recognition for such a purpose, I would like to make use of this time rather than just expend it in a quorum call.

ATROCITIES IN AFGHANISTAN

Mr. BYRD. Mr. President, earlier this week I met with leaders of the Afghan resistance. Later today, I will have the benefit of the Pakistani Foreign Minister's views on the Afghan situation. It is clear to me that, despite Soviet claims of progress at the recent U.N.-sponsored peace talks, the situation in that sad country remains very grave. Despite the brutality of the Soviets—and the acceleration of Soviet warfare against the people of Afghanistan—the resistance fighters told me and other Senators who were present with me as we met with the several leaders of the resistance that the spirit of the people of Afghanistan remains unbroken.

Mr. President, the United States ratification of the Genocide Convention will permit the United States a much stronger hand in confronting the Soviet Union on the vital matter of its activities in the Nation of Afghanistan. The reality of Soviet behavior in Afghanistan seems to amount to the crime of genocide as defined in that convention. Now that the United States will shortly become a full party to that treaty, I think we can operate with a more credible and stronger hand in bringing the case against Soviet activities in that country before the world community.

Mr. President, despite the public relations blitz by the new Gorbachev leadership to portray itself as reasonable and flexible in its approach to the West, and despite hints and indications given here and there that Mr. Gorbachev is on the verge of making a major change in Soviet policy toward Afghanistan, no substantial change in Soviet policy or practices has yet appeared. Sooner or later, flashy new Soviet imagery must give way to practical changes in policy leading to a more constructive, humane, and productive path.

To help bring that about, I hope the Moslem nations of the world will take a new look at what is going on in Afghanistan and what is happening to their brothers there. Also the world press—and that includes not just the European press but also the United States media—ought to do everything they possibly can to portray to the world the brutalities and savagery that are being conducted by the Soviet invaders in Afghanistan because if the devastation of that country, the brutality that is being shown to the citizens there, could be brought to the center of the world stage, then I have no doubt that there would be a different future and a better outlook for that ravaged country.

Mr. President, I think it is important to give the Soviets every opportunity to meet us halfway on the outstanding issues which divide our two nations. I have made every effort to do what I can to help produce a better atmosphere and mechanisms for reducing misunderstandings and for developing arrangements and agreements on arms control matters and regional disputes where our interests clash with those of the Soviets. I led a bipartisan Senate delegation to meet with Mr. Gorbachev last September. I have proposed that Mr. Gorbachev be invited to address a joint session of the Congress when he visits this Nation, provided that an address by President Reagan to the same joint session be televised unedited not only to the United States of America, but also to the people of the Soviet Union.

Mr. President, let me say again that I shall be happy to relinquish the floor to any Senator who wishes to call up an amendment. Until that time comes, I shall proceed; otherwise, there would just be a quorum call.

Nevertheless, Mr. President, we must continue to impress upon the Soviets how repugnant their activities in Afghanistan are to us.

Most recently, General Secretary Gorbachev took the opportunity provided by his address to the Twenty-seventh Communist Party Congress to say, "We should like, in the nearest future, to withdraw the Soviet troops stationed in Afghanistan at the request of its government." He went on to claim that there was agreement with the puppet regime in Kabul on a schedule for that withdrawal, and to remind his audience that "it is in our vital national interest that the U.S.S.R. should always have good and peaceful relations with all its neighbors."

It is difficult to cultivate good relations when you are engaged in the wholesale massacre of unarmed civilians in a neighboring country. I look forward to the day when the glimmers of hope for a change in Soviet policy raised by Mr. Gorbachev's words are translated into action, into reality, into military withdrawal from that very unhappy and unfortunate faraway country. So far, unfortunately, only expectations have been raised.

The action by the Senate to approve the Genocide Convention for ratification, then, provides the United States with the opportunity to raise, for the first time as a signatory, the issue of Soviet violations of the Genocide Convention in Afghanistan. In his report of November 5, 1985, to the U.N. General Assembly on the "situation of human rights in Afghanistan," the special rapporteur of the Commission on Human Rights described the situation during the fifth year of Soviet occupation of Afghanistan in these words:

> The government, with heavy support from foreign troops, acts with great severity against opponents or suspected opponents of the regime without any respect for human rights obligations * * * It appears that in the course of operations all kinds of sophisticated weapons, in particular those that have a heavy destructive and psychological effect, are being used. The target is primarily the civilian population, the villages and the agricultural structure.

The report continues:

> As a result, not only individuals, but whole groups of persons and tribes are endangered in their existence and in their lives because their living conditions are fundamentally affected by the kind of warfare being waged.

The report cites "the use of anti-personnel mines and of so-called toy bombs" and "the indiscriminate mass killings of civilians, particularly women and children." The report notes that the war is characterized by:

> The most cruel methods of warfare and by the destruction of large parts of the country which has affected the conditions of life of the population, destabilizing the ethnic and tribal structure and disrupting family units. The demographic structure of the country has changed, since over 4 million refugees from all provinces and all classes have settled outside the country and thousands of internal refugees have crowded into the cities like Kabul.

Mr. President, this independent account by the United Nations conforms to the Genocide Convention's definition of that crime in article II, as the willful act of destroying in whole or part a national, ethnical, racial, or religious group by:

First, killing members of the group; second, causing serious bodily or mental harm to members of the group; third, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; fourth, imposing measures intended to prevent births within the group; and fifth, forcibly transferring children of the group to another group.

The U.N. report substantiates the fact that the Soviet Union and its Afghan puppets are engaged in acts which seems to satisfy the elements of this definition of the crime of genocide. In fact, the report demonstrates that the Soviets in Afghanistan are engaged in many practices which, under the convention, appear to amount to the crime of genocide.

The concurrent resolution I am today submitting recognizes that the Soviet actions in Afghanistan may constitute the crime of genocide against the Afghan people, and calls upon the Secretary of State to investigate whether the Soviets are in fact violating their obligations under the Genocide Convention by virtue of their cruel warfare against the Afghan people.

In addition, the concurrent resolution urges the Secretary of State to review the U.S. policy that affords diplomatic recognition to the puppet regime in Kabul. There may be sound reasons for this, but I believe it is time for the Secretary of State to conduct a thorough review of whether a continu-

ation of this policy is appropriate. The Soviet Government is at war with the people of Afghanistan, and the so-called Government of Afghanistan is nothing but a Soviet sham.

I do recognize that we are looking forward to the possibility that the Soviets will pull their military forces out of Afghanistan and the Afghan Government that comes to power in the wake of that withdrawal will be the beneficiary of guarantees by both superpowers—and that that government will be independent and neutral and truly represent the whole of the Afghan people Obviously, an American presence is needed for such gurantees, and one might argue that a continued presence such as the one that now exists is therefore appropriate to that long-term goal.

Nevertheless, Mr. President, the entire concept of diplomatic relations in the context of Afghanistan today strikes me as questionable. I believe the question should be thoroughly reassessed by the executive branch on an expedited basis.

Finally, the concurrent resolution recognizes the need for material support for the people of that war-ravaged country, a renewed effort to encourage Soviet withdrawal and a political solution to the stalemate, and a renewed commitment to informing the world of the situation in Afghanistan.

I believe this concurrent resolution is entirely in keeping with the President's state of the union promise to the people of Afghanistan that "America will support with moral and material assistance your right not just to fight and die for freedom, but to fight and win freedom." In 1984, I submitted the first successful Senate resolution calling for essential food and medical assistance for the people of Afghanistan. I believe that this new concurrent resolution is an appropriate outgrowth of that earlier effort.

I would point out, Mr. President, that this will be the first action to be taken by the United States in regard to the terms of the Genocide Convention. I can think of no more appropriate subject for the first action to follow ratification of the convention than the plight of the heroic people of Afghanistan.

When I led the first Senate delegation to meet Soviet General Secretary Gorbachev last September, we found the subject of Afghanistan to be the most contentious and emotionally volatile issue in our discussions. Since that time, we have heard persistent stories of increased Soviet willingness to reach an accommodation on the Afghanistan question. It would be a mistake for the Soviet leadership to believe that talk about solutions will reduce the outrage of the world community. As long as Soviet troops commit atrocities against the Afghan people and continue to occupy that long-suffering country, freedom-loving peoples will decry these actions and will be moved to help the Afghan people.

As participants in the Genocide Convention, we are now in a much better position to join in condemning Soviet actions which, as described in the report to the U.N. General Assembly, amount to a calculated effort to destroy the Afghan people. The concurrent resolution I submit today will permit the Senate to make an appropriate statement on this matter. I ask unanimous consent that its full text be printed at the conclusion of my remarks, and of course I expect its appropriate referral. I urge all my colleagues to join in cosponsoring the concurrent resolution.

There being no objection, the concurrent resolution was ordered to be printed in the RECORD, as follows:

S. CON. RES. 151

Whereas the Soviet Union invaded the sovereign territory of Afghanistan on December 27, 1979, and continues to occupy and attempt to subjugate that nation through the use of force, relying upon a puppet regime and an occupying army of an estimated 120,000 Soviet troops;

Whereas the outrageous and barbaric treatment of the people of Afghanistan by the Soviet Union is repugnant to all freedom-loving peoples as reflected in seven United Nations resolutions of condemnation, violates all standards of conduct befitting a responsible nation, and contravenes all recognized prinicples of international law;

Whereas the Special Rapporteur of the United Nations Commission on Human Rights, in his November 5, 1985 report to the General Assembly, concludes that "whole groups of persons and tribes are endangered in their existence and in their lives because their living conditions are fundamentally affected by the kind of warfare being waged" and that "[t]he Government of Afghanistan, with heavy support from foreign [Soviet] troops, acts with great severity against opponents or suspected opponents of the regime without any respect for human rights obligations" including "use of anti-personal mines and of so-called toy bombs;" and "the indiscriminate mass killings of civilians, particularly women and children";

Whereas the Special Rapporteur also concludes that the war in Afghanistan has been characterized by "the most cruel methods of warfare and by the destruction of large parts of the country which has affected the conditions of life of the population, destabilizing the ethnic and tribal structure and disrupting family units" and that "[t]he demographic structure of the country has changed, since over 4 million refugees from all provinces and all classes have settled outside the country and thousands of internal refugees have crowded into the cities like Kabul";

Whereas the United Nations General Assembly, in a recorded vote of 80–22 on December 13, 1985, accepted the findings of the Special Rapporteur and deplored the refusal of Soviet-led Afghan officials to cooperate with the United Nations, and expressed "profound distress and alarm" at "the widespread violations of the right to life, liberty and security of person, including the commonplace practice of tortune and summary executions of the regime's opponents, as well as increasing evidence of a policy of religious intolerance";

Whereas, in a subsequent report of the Special Rapporteur of February 14, 1986, the Special Rapporteur found that "The only solution to the human rights situation in Afghanistan is the withdrawal of the foreign troops" and that "Continuation of the military solution will, in the opinion of the Special Rapporteur, lead inevitably to a situation approaching Genocide, which the traditions and culture of this noble people cannot permit."

Whereas the Soviet invasion of Afghanistan caused the United States to postpone indefinitely action on the SALT II Treaty in 1979, and the presence of Soviet troops in that country today continues to adversely affect the prospects for long-term improvement of the U.S.-Soviet bilateral relationship in many fields of great importance to the global community;

Whereas the Soviet leadership appears to be engaged in a calculated policy of raising hopes for a withdrawal of Soviet troops from Afghanistan in the apparent belief that words will substitute for genuine action in shaping world opinion; and

Whereas President Reagan, in his February 4, 1986 State of the Union Address promised the Afghan people that, "America will support with moral and material assistance your right not just to fight and die for freedom, but to fight and win freedom . . ." Therefore, be it

Resolved by the Senate (the House of Representatives concurring),

SEC. 1. The United States, so long as Soviet military forces occupy Afghanistan, should support the efforts of the people of Afghanistan to regain the sovereignty and territorial integrity of their nation through—

(a) the appropriate provisions of material support;

(b) renewed multilateral initiatives aimed at encouraging Soviet military withdrawal, the return of an independent and nonaligned status to Afghanistan and a peaceful political settlement acceptable to the people of Afghanistan, which includes provision for the return of Afghan refugees in safety and dignity;

(c) a continuous and vigorous public information campaign to bring the facts of the situation in Afghanistan to the attention of the world;

(d) frequent efforts to encourage the Soviet leadership and the Soviet-backed Afghan regime to remove the barriers erected against the entry into and reporting of events in Afghanistan by international journalists; and

(e) vigorous efforts to impress upon the Soviet leadership the penalty that continued military action in Afghanistan imposes upon the building of a long-term constructive relationship with the United States, because of the negative effect that Soviet policies in Afghanistan have on attitudes toward the Soviet Union among the American people and the Congress.

SEC. 2. The Secretary of State should (a) determine whether the actions of Soviet forces against the people of Afghanistan constitute the international crime of Genocide as defined in Article II of the International Convention on the Prevention and Punishment of the Crime of Genocide, signed on behalf of the United States on December 11, 1948, and, if the Secretary determines that Soviet actions may constitute

the crime of Genocide, he shall report his findings to the President and the Congress, along with recommended actions; and,

(b) review United States policy with respect to the continued recognition of the Soviet puppet government in Kabul to determine whether such recognition is in the interest of the United States.

Mr. BYRD. Mr. President, I ask unanimous consent that an appropriate article from the New York Times of June 18, 1986, be inserted in the RECORD.

There being no objection, the article was ordered to be printed in the Record, as follows:

U.S. MAY ESTABLISH AFGHAN REBEL TIES

(By Richard Halloran)

WASHINGTON, June 17—A senior Administration official said today that President Reagan held open the possibility that the United States would extend diplomatic recognition to the Afghan rebels if they acquired "more of the attributes of a government."

The official's stand on the issue was noticeably different than that taken publicly Monday by the White House spokesman, Larry Speakes, after Mr. Reagan met with four leaders of an Afghan rebel coalition based in Pakistan.

Mr. Speakes said the President had told the Afghan delegation, led by Burhanuddin Rabbani, that it would be "premature" for the United States to extend such recognition now.

The Administration official repeated that point today but told a group of reporters that Mr. Reagan had "encouraged" the Afghans. The official said the use of the word "premature" should not be taken as a polite way of saying "forget it."

The official said Mr. Reagan supported the Afghan leaders' demands that negotiations over the withdrawal of Soviet forces from Afghanistan be between "the warring factions"—the Afghan rebels and the Soviet Union.

Instead, what diplomats call "proximity talks" have been held in Geneva between representatives of the Afghan and Pakistani Governments. The delegates do not meet face to face, but their views are conveyed by a United Nations official.

REBELS MEET WITH SENATORS

On Capital Hill, the Afghan delegation met with Senator Gordon J. Humphrey, Republican of New Hampshire, who generally agreed with their position on both issues. A spokesman said the Senator favored closing the United States Embassy in Kabul, the Afghan capital, and expelling Afghan diplomats from Washington.

The spokesman also said Senator Humphrey felt that the rebel leaders should be included in the negotiations sponsored by the United Nations.

The Afghan delegation also met with Senator Bill Bradley, Democrat of New Jersey, who repeated his support for their movement and the recognition of the rebels as the "sole legitimate representative of the Afghan people."

A spokesman for the Senator said Mr. Bradley had long felt that the rebels should become members of the Islamic Conference Organization and should take the Afghan seat at the United Nations. He also reiterated the Senator's position that no settlement of the Afghan issue should be made without the rebels' consent.

The Administration official briefing reporters on the rebel leaders' meetings with the President on Monday and with lower-level officials today laid out several "attributes of a government" that the President would consider in his decision on diplomatic recognition.

One would be greater cooperation among the rebels, the official said. Ever since Soviet troops swept into Afghanistan in late 1979 in an effort to keep in power a Government friendly to Moscow, the Moslem rebels have found it difficult to work together

A second criterion, the official said, would be greater rebel control over Afghan territory. In the guerrilla war being fought there, neither the Soviet Union nor the rebels have firm control over large sectors of the country.

In that connection, the Afghan leaders renewed their request for anti-aircraft weapons with which to drive off Soviet helicopters and aircraft. The Administration official said he would not discuss "covert" operations—meaning the supply of American weapons to the rebels—but said a sound antiaircraft defense was crucial to the control of territory.

ELECTION PLAN IS CITED

The Administration official noted that the coalition planned to hold elections in Afghanistan and the Afghan refugee camps in Pakistan next fall to form a deliberative council

The official emphasized that Mr. Reagan had encouraged the rebel leaders to seek "greater international visibility." He suggested that the United States would find it easier to extend diplomatic recognition if the rebel coalition gained wider acceptance and did not appear to be a proxy of the United States.

He also said United States officials, had suggested that the rebel leaders make a greater effort at the United Nations and at Islamic conferences to cultivate nonaligned nations that might be sympathetic to their cause.

The official noted, with evident approval, that the rebel coalition planned to open an office in New York. In addition, about 40 Afghan refugees are scheduled to arrive in the United States this week for medical treatment.

DEEPER EXCHANGE IS SOUGHT

The rebel delegation's visit to the United States and the meeting with Mr. Reagan should be seen as part of a process of widening the rebels' international image, the official said. He said the Administration favored a "deeper exchange of political views" between the rebels and Administration officials.

Mr. Reagan, in his meeting with the rebel leaders, "completely ruled out separate deals with Moscow" in which an arms agreement, for instance, would be reached in exchange for a halt to American support for the rebels, the official said.

He said that anxiety had swept through the refugee camps in Pakistan whenever the Afghans, who are often isolated from political and diplomatic developments elsewhere, suspected that the United States and the Soviet Union might reach an agreement at their expense.

RIFT IN REBEL ALLIANCE

ISLAMABAD, PAKISTAN, June 17.—The Afghan rebel alliance split publicly today over the question of identification with the United States.

Two Moslem leaders rebuked four other rebel chiefs for meeting in Washington with President Reagan.

In Kabul, the Afghan Government criticized Mr. Reagan for meeting with the guerrillas and said the United States supported terrorism.

Gulbuddin Hekmatyar, leader of the Hezbi-Islam guerilla group, and Raul Saiaf, head of another small insurgent group, issued a statement saying the trip to Washington has not been approved by the rebel alliance.

Other guerrilla commanders said the visit had the support of the collective leadership.

Mr. Saiaf and Mr. Gulbuddin insisted that insurgents should not be identified with the United States

"Decisions of a sensitive nature should be made keeping in view the objects of the Afghan resistance movement and not creating any misunderstanding," their statement said." The future of the seven-party alliance can be secured by this way."

Mr. Gulbuddin asserted that the commanders who went to Washington had done so in a "private capacity." He called their visit a threat to rebel unity.

Officials of the four groups whose leaders made the trip rejected the criticism and defended their American ties.

"It was a very intelligent decision to go," said Masood Kalili, political director of the Jamiat-Islami insurgents. "We cannot fight the Russians without friends."

Guerrilla officals outside the fundamentalist groups led by Mr. Gulbuddin and Mr. Saiaf said today that the decision to visit Washington had been made at an alliance meeting and the five of the seven leaders had approved.

Mr. BYRD. I see my friend from Illinois seeks recognition and I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DIXON. I thank the distinguished minority leader, Mr. President.

TAX REFORM ACT OF 1986

The Senate continued with the consideration of the bill.

CUSTOMS VALUATIONS VERSUS INCOME TAX VALUATIONS: ABUSES CAN BE PREVENTED WHILE ENSURING FAIRNESS

Mr. DIXON. Mr. President, it was my hope and expectation that a colloquy might take place on the floor of the Senate with regard to the transfer prices for imports which is the subject of section 981 of the tax bill. This subject is discussed on pages 418 and 419 of the Finance Committee report on the tax reform bill.

The relationship between prices established for purposes of customs duties as contrasted to prices for goods established for purposes of Federal income taxes was not considered by the House of Representatives at any point in its consideration of H.R. 3838. Nor, indeed, do I recall any hearings before the Senate Finance Committee on this subject.

The relationship between prices established for purposes of import duties and prices established in connection

with the marketing of imported goods by U.S. corporations is an entirely appropriate subject for this body to consider in connection with the reform of our Federal income tax laws. There can be no question but that abuses have occurred in the past.

Some U.S. companies importing goods from overseas affiliates have utilized inordinately low valuations for purposes of the payment of tariffs on such imported goods. Then, the same companies established excessively high prices for purposes of reducing income tax liability on the marketing of such imported goods.

The legislation before us very appropriately seeks to curtail such practices and to require arm's length pricing of goods, both for customs and income tax purposes. I do not disagree with that objective in any sense.

The committee report cites the Brittingham case. Another case, the Ross Glove case, also has a significant bearing on this subject and would appear to support the position which was to have been embodied in the colloquy; namely, that the bona fide value of goods for customs purposes is an important factor in the establishment of the pricing of goods for income tax purposes.

Mr. President, the purpose of the colloquy that I had intended to support would have simply declared a truism: The bona fide valuation of goods for customs purposes should be deemed an important factor in the pricing of goods for income tax purposes. That is all.

My remarks here today, however, are neither a colloquy nor an effort to amend the bill. Rather, I am simply trying to express my understanding of what is or should be intended with regard to arm's length establishment of prices of goods for income tax purposes which have been imported and upon which duty has been paid on the basis of a fair valuation of such goods for customs purposes.

□ 1350

Mr. President, I wonder whether the distinguished manager of the bill wants me to yield to him or suggest the absence of a quorum.

Does the distinguished manager of the bill intend to go forward, or shall I suggest the absence of a quorum?

Mr. PACKWOOD. Let me say once more what Senator LONG and I have said: We are waiting for amendments, and we are ready to go forward. With each passing hour, I suppose, our tolerance level of accepting amendments that we might accept becomes slightly less tolerable.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, we have been here all day. Yesterday, I heard there were 90 amendments. So far, the only amendment we have had has had to do with taking some language out of the bill and putting it back—the same language.

I have not heard one substantive amendment that has come to the floor today. I cannot understand what we are waiting for.

I say to the manager of the bill that maybe we are ready for third reading. Maybe we should just go ahead and pass the bill. The Senator from Ohio is not standing in the way, notwithstanding the fact that I still have amendments. The fact is that I think we have spent a lot of time putting this bill together. It is not a perfect piece of legislation. As you well know, I have attacked some of the provisions as being special privilege for the few and being unfair to the rest of the taxpayers, and I believe that to be the fact. But what I now see happening is that everybody either has a new transition rule that they do not want to call a transition rule or, if they do not want to call it that, they have some new provision they want to put in, and I do not see them on the floor.

I say to the managers of the bill that maybe they should consider taking a position that they are not going to take any more amendments, put together a group of 51 Senators who will turn down all amendments, regardless of the merits.

I think that the overall good that comes from passing this legislation far outweighs the necessity of adopting any particular amendment. I am saying that notwithstanding the fact that the Senator from Ohio does have some additional amendments that he expects to bring to the floor.

I tried to facilitate the process yesterday. I have tried to move forward the last several days and have not tried to hold up the managers. I am trying to say that it is disturbing. It is now almost 2 o'clock, and not one amendment of any consequence has been brought to the floor. I think it is high time we move on.

Obviously, procedures are available to delay. But the best way to see that we pass this bill is to have a coalition of 51 Members who would vote down any amendment; and I publicly say to the Senator from Oregon that I would be happy and privileged to be one of those 51 Members. I think we should get on with the business.

Mr. PACKWOOD. Mr. President, I appreciate very much what the Senator is saying. I think that among some of the amendments there may be a meritorious one. The frustration is that most are not even written up.

I would be willing, if I could see the amendments, to look at them and have, say, a half hour or an hour time limit. Members will not bring up the amendments, and I do not know what they are, and I do not want a time limit on an amendment I have not seen. There may be something of import in an amendment, and we may have 2½ minutes to a side, and that will not be enough time to explain the amendment.

I sympathize with the Senator. I think there are one, two, or three good amendments. But we cannot get anything.

Mr. METZENBAUM. I say to the manager of the bill that I do not doubt that with 90 amendments, there may be 1, 2, or 3, 10, 20, or 30; but while you are evaluating those 90 amendments, there are about 110 this morning.

Mr. PACKWOOD. This morning the majority leader said 80 had come in, about 10 minutes to 10.

Mr. METZENBAUM. That is the way it is going to continue to be. Therefore, I think it is a burden that the Finance Committee chairman should not be called upon to bear—that is, to say that this is good, but somebody over here, I or some other Senator, may decide it is not so good. As a matter of fact, we then find ourselves debating this measure ad infinitum.

That is why I think we should shut the door down and pass the bill. You could pass it today if you put together a coalition of 51 Senators who say no more amendments, regardless of whether they are good, bad, or indifferent.

Mr. PACKWOOD. Senator LONG and I could sit here and ask for third reading, and the clerk would call the roll, and on comes the vote. That would be regarded as bad faith. Either the vote would go "No" or, if it were passed, someone would move to reconsider and say, "That wasn't part of the agreement, and I was supposed to be notified."

I do not know at this point just where to go.

Mr. METZENBAUM. I understand what would happen if the Senator attempted to go to third reading. Some would be very upset about that.

What I am suggesting is that the Senator from Oregon is the manager of the bill, part of the majority party—and I am not saying this critically. I am saying that if he took the position that there will be no more amendments, regardless of their method, the overall need to pass this legislation is more important than any single amendment that might be offered by me or Senator LONG or by any other Member of this body, and I

think you could put together 51 Members who would vote that way.

□ 1400

Mr. PACKWOOD. The way we test that, if my distinguished colleague would be willing to do it, is put forth a Senate resolution that there be no more amendments without a rollcall and see what happens.

Mr. METZENBAUM. I do not think it is appropriate for the Senator from Ohio to make this effort. I say this to the Senator from Oregon, I will be very happy to join as his first cosponsor of such resolution.

Mr. DIXON. Mr. President, may I say to the distinguished manager of the bill—I see he is occupied with the distinguished manager on our side. I will pause a moment, Mr. President, if it is all right with you, while they complete their conversation.

May I say to the distinguished manager of the bill that as I have indicated on prior occasions yesterday and last night, both to the distinguished manager on the majority side and the distinguished manager on the minority side, the distinguished Senator from Alaska and myself have an ESOP amendment in which we are joined by the distinguished manager on the minority side. The consequences so far as revenue are concerned are minimal.

We would argue with what the Joint Tax Committee has done. But notwithstanding that, we are going to provide for a little revenue in connection with what I have already shown the distinguished manager when I came over to see him a moment ago, and probably a deferral of an effective date that will do the job. I would hope we can do that in short order.

The dsitinguished senior Senator from Alaska is out of pocket somewhere and I cannot find him right now. We have met earlier today.

But I would hope that some time in reasonably short order this afternoon we could be prepared to offer this amendment, and I want the manager to know that I am diligently working on bringing that to a reality in short order.

Mr. PACKWOOD. I appreciate that and hope the Senator is successful.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. NICKLES) The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, I know a number of my colleagues have been asking me if I could give them any idea what is going to happen today and during the remainder of the week.

I am just not quite in a position to do that. I was not here when the distinguished Senator from Ohio suggested that maybe we should just say this is the end, no more amendments.

It is very difficult to enforce obviously and it would take a majority to demonstrate for some period of time that we are willing to dispose of amendments. But that could lead to other problems and people might decide they might like to talk 2 or 3 days about the bill unless you agree to their amendment.

There are a lot of pitfalls. We are not trying to coerce anyone or pressure anyone.

But it would seem to me that we do have a responsibility. There are scores of amendments and they come from both sides. I think there are more on this side than that side. So we are not choosing up sides here.

But I think there are a number of us who would like to bring this to a halt, say, "OK, we have an agreement; we are going to vote at 2 o'clock." In the meantime, maybe we could do something else.

What I would intend to do in about 30 minutes is maybe sneak off to the minority leader's office if he is there and suggest a course of action to him.

I would hope that during that period others would come to the floor. This would be a good time to make a record that you thought about offering an amendment, but decided not to, get it in the Record, so it will be noticed in conference.

I think we could dispose of a number of these just with statements or maybe colloquies that at least would indicate that it would be a conferenceable item.

There is not much going on here now.

We really do not want to repeat tonight what happened the last two nights. At least, I would rather not stay until 12:30 or 1 a.m. But again I think there is a desire to at least do something definitive that will permit us to say OK, at a time certain this is going to end, and I do not believe that is asking too much. We have not said what time or even what day but at a time certain this will be the end, if we can work that out. Again I would urge Members who have a different view maybe they ought to be on the floor at 3 o'clock. We may try to propound some agreement about that time and that would give everybody at least an hour's notice, if they want to object or if they insist on offering their amendments or whatever, but right now there is nothing happening.

Mr. DECONCINI. Mr. President, I am ready to offer an amendment.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. I have asked our cloakroom to put out the word to our colleagues on this side of the aisle to please come over to the Senate floor to work out their amendments to avoid getting caught without enough time in the last minute. I do not know when the last minute might occur but there is going to be a last minute at some point and if Senators just wait for other Senators to go forward someone is going to get caught in that last-minute jam. I have seen it happen before. I just put out the word, and I hope it will help.

I have an amendment which I am ready to call up so that I start the process myself.

Mr. DOLE. Good. I yield the floor.

Mr. BYRD. The distinguished Senator from Arizona has come over in response to the call, and I yield to him first and then I will go ahead.

□ 1410

Mr. DECONCINI. Mr. President, I say to the leader that I would be more than happy to wait for his amendment.

Mr. BYRD. No, please go ahead.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I yield to the Senator from Ohio.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 2106

(Purpose: To express the sense of the Senate on transition rules)

Mr. METZENBAUM. Mr. President, I am about to send a sense-of-the-Senate resolution to the desk and ask for its immediate consideration. It really refers only to the fact that the conference committee, when they report back, would be good enough to tell us the name of the business concern or group receiving a special or unique treatment in the bill and the reason for the special or unique treatment and the cost of the special or unique treatment.

Mr. President, I send the amendment to the desk. It is my understanding the manager of the bill is prepared to accept it.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM] proposes an amendment numbered 2106.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

SEC. . SENSE OF THE SENATE ON TRANSITION RULES.

It is vital for the Senate to be fully informed about every matter that comes before it, therefore, it is the sense of the Senate that the conference report on H.R. 3838 contain—

"(1) the name of business concern or group receiving a special or unique treatment in the bill;

"(2) the reason for the special or unique treatment;

"(3) the cost of the special or unique treatment.".

Mr. METZENBAUM. Mr. President, I have pretty much explained this. I think, when the conference committee reports back, all of us will want to know what is in the matter, why it was done, and what the cost will be.

I want to make it very clear, in that connection, with the handling of the bill on the floor, that information was not immediately available when the bill came to the floor. But the chairman, the manager of the bill, as well as the entire staff, has been extremely cooperative in providing the information. But, by our own inability to get the necessary information there was some delay.

All I am doing in connection with this particular sense-of-the-Senate resolution is indicating to the conference committee, when it comes back, to tell us what the facts are so we will not have to delay passage.

Mr. PACKWOOD. Could I ask a question? When I talked to the Senator from Ohio about this, I did not quite understand. Is this a change of the Senate rules?

Mr. METZENBAUM. No, just a sense-of-the-Senate resolution. There was some talk on our part about changing the Senate rules. The Senator from Ohio saw that that was a matter of great moment and it would have to be cleared in a number of places. This is just a sense-of-the-Senate resolution, merely indicating that we would like to get that information and hope that the conference committee would be guided by that.

Mr. LONG. If the Senator will yield to me, I read a statement on the floor a short time ago—I do not think the Senator was here at the time—where the Senator from Louisiana indicated that we, speaking for the minority, did not propose to accept amendments unless our staff had a chance to look them over, as well as the manager of the bill.

While the Senator did show me the courtesy of discussing the amendment with me, I would appreciate it very much if he would allow sufficient time for our staff to focus on it.

Mr. METZENBAUM. I apologize. As a matter of fact, the manager on the minority side is 100 percent correct. It was an oversight on my part. I did talk to you about it when I was proposing a change in the rules, and I failed to come back with the sense-of-the-Senate resolution.

Mr. President, I suggest the absence of a quorum.

Mr. DECONCINI. Will the Senator withhold that?

Mr. METZENBAUM. Sure.

Mr. DECONCINI. May I proceed with my amendment?

Mr. METZENBAUM. Of course.

Mr. DECONCINI. addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, is there a pending amendment now from the Senator from Ohio?

The PRESIDING OFFICER. There is an amendment from the Senator from Ohio.

Mr. LONG. Would the Senator be willing to temporarily lay his amendment aside until we have a chance to do our staff work?

Mr. METZENBAUM. Mr. President, I ask unanimous consent that my amendment, a sense-of-the-Senate resolution, be temporarily laid aside in order that the Senator from Arizona may be permitted to speak.

The PRESIDING OFFICER. Without objection, it is so ordered.

(Later the following occurred:)

Mr. METZENBAUM. Mr. President, I wish to express my great appreciation to the Senator from Arizona. He has certainly been very courteous and cooperative.

Mr. President, my sense-of-the-Senate amendment is pending now and has been cleared by both sides. I modified the amendment—one word was crossed out by mistake, the word "each"—by just reinserting the word "each."

I think we are ready to act in connection with the amendment.

The PRESIDING OFFICER. The amendment is so modified.

The amendment (No. 2106), as modified, reads as follows:

Insert at the appropriate place in title XVII the following new section:

SEC. . SENSE OF THE SENATE ON TRANSITION RULES.

It is vital for the Senate to be fully informed about every matter that comes before it, therefore, it is the sense of the Senate that the conference report on H.R. 3838 shall contain—

"(1) the name of each business concern or group receiving a special or unique treatment in the bill;

"(2) the reason for the special or unique treatment; and

"(3) the cost of the special or unique treatment.".

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2106), as modified, was agreed to.

Mr. METZENBAUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Conclusion of late proceedings.)

AMENDMENT NO. 2107

(Purpose: To lower the maximum individual tax rate to 26 percent, to increase the income to which the 15 percent rate applies, to repeal the foreign tax credit and foreign income deferral, and to increase the rate of the minimum tax)

Mr. DECONCINI. Mr. President, I thank the Chair and I thank my friend from Ohio.

Mr. President, shortly I intend to send an amendment to the desk which will make some radical changes and, I think, radical improvements for middle-income taxpayers while, at the same time, improving the U.S. productive capacity and capability.

First, I would like to explain and outline this amendment. But, even before I do that, Mr. President, I want to say that, as to the Finance Committee bill that is before us here, though there is certainly a lot of questions on the transition rules and the fairness and the equity on that part of it, indeed, this is a tremendous step. As I have said before to the distinguished chairman of this committee and the ranking member, both privately and on the floor here, they did a tremendous job of bringing out a bill eliminating as many of the loopholes in the deductions that are here. And, though I think many of us feel they could be corrected and be more fair and offer amendments, this is a milestone in tax legislation.

This amendment that I will send to the desk shortly will raise the breakpoint at which taxpayers move from the 15-percent bracket into the 27-percent bracket. Specifically, that breakpoint will be increased by 20 percent. For married couples filing jointly, that means that the breakpoint is increased from $29,300 to $35,160; and for a single filer, the breakpoint will be increased from $17,600 to $21,120.

So that means that, under the present Senate Finance bill, a married couple filing jointly would start paying the 20 percent on any income over $29,300. This particular amendment would change that. That means they would not pay the 27 percent until they reached $35,160, and the same example holds true on the single filer.

Mr. President, I ask unanimous consent that a comparative table be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

SUMMARY OF DeCONCINI AMENDMENT

	Breakpoint for top bracket	
	Finance plan	DeConcini amendment
Single filer	$17,600	$21,120
Joint filer	29,300	35,160
Head of household	23,500	28,200
Married filing separately	14,650	17,580

Mr. DECONCINI. Second, my amendment would lower the top rate for individuals from the Finance Committee reported 27 to 26 percent. The Joint Committee on Taxation informs me that lowering the top rate to 26 percent and raising the breakpoint by 20 percent will cost approximately $75 billion over a 5-year period.

One of the many complaints that we have heard on this floor time and time again is that this bill does not do enough for the middle-income taxpayer with incomes between $20,000 and $40,000. This amendment substantially improves the condition for these taxpayers.

While I have not been able to obtain a distribution breakdown, clearly my amendment benefits the middle-income taxpayer. Under this amendment, the middle-income taxpayer filing jointly would pay 15 percent on the first $35,160 of taxable income. The bill as written would push them into the 27-percent bracket at $29,300. Single filers, the same type of example, would not pay 27 percent until their taxable income tops $21,120 while under the bill they would be paying 27 percent on anything above $17,600. This bracket shift in conjunction with the lowering of the top rate from 27 percent to 26 percent is a significant improvement.

Mr. President, my colleagues may now be asking themselves: Well, where is the Senator from Arizona going to get that $75 billion? Well, I believe I found a reasonable source for this revenue.

First, I would shift the foreign tax credit to a deduction, a move that will raise $68 billion over 5 years. Second, I will raise the corporate and individual minimum tax by 1.25 percent, which raises $7 billion over 5 years.

I would like to briefly discuss the reasons I have chosen to shift the foreign tax credit to a deduction. For too long, America has been sending its capital and its productive capacity overseas. And the U.S. Tax Code, far from discouraging this flight, is to some extent encouraging it. In 1981, new U.S. direct investment abroad totaled $9.6 billion. Last year U.S. direct investment abroad increased by an additional $19.1 billion. Mr. President the situation is getting worse and if this tax bill passes as is, the problem is going to compound, continue, and get worse.

The flight of U.S. capital into foreign investment is worsening our already devastated balance-of-payments. The current balance of payments deficit outstrips anything this country has seen before. Ten years ago, in 1975 to be exact, this country had a trade surplus of $8.9 billion. Imagine a trade surplus of $8.9 billion. In 1981, at the beginning of this administration, we had a trade deficit of $28 billion, and last year, 1985, we had a trade deficit of $127 billion.

I believe we can look at Great Britain as an example of what happens when a country experiences a tremendous outflow of capital. The British economy at the turn of the century found themselves in the position we are increasingly finding ourselves in today. The result: Britain lost its capital base. I would not like to see history repeat itself in the United States today. I am fearful that is where we are headed.

This country has always been a producing nation. But U.S. production capacity has fallen drastically. We are importing far more than we are exporting. One explanation for the dramatic change in our trading situation is that we are simply not manufacturing the products needed for export. The reason? We are sending our manufacturing capital overseas, and we are encouraging that capital flight through the Tax Code. Every dollar that U.S. industries invest overseas in plants, factories and the like is a dollar not invested in this country.

Up to now, our answer to this worsening balance of payments has been to continue to print money to pay our overseas debts. Simple arithmetic tells us that we cannot continue to print money without risking a return to the double digit inflation of the late 1970's and early 1980's or worse. Instead of producing goods for export, we are printing dollars for export. And, if we are not careful, the United States could become a nation of investment bankers and McDonald's employees, not that there is anything wrong with those employees, but that is not what makes a great nation economically.

One way we can begin to address this problem is by converting the present foreign tax credit to a deduction. By allowing a deduction for foreign paid taxes, rather than a credit, we maximize gain for the United States and minimize encouragement of capital flight.

Certainly this may be considered a radical approach. But, the present system has done little to improve America's competitive position. Furthermore, I believe this change is both rational and fair. Presently, taxes paid by corporations to foreign governments, other than income taxes, are not creditable but are deductible if they are a business expense. I believe that these foreign income taxes are exactly that, a cost of doing business in foreign countries and a deduction is the appropriate way to go. That is what we do today. If you have taxes in your business, you get to deduct them as an expense and cost of doing business. That is what we should be doing here.

Treasury, I, and the President's tax proposal, while not taking this approach, did seek to modify the foreign tax credit by proposing a per-country limit on foreign tax credits. Likewise, during consideration of the 1975 tax bill, the Senate voted to end a procedure known as deferral, where you could put off these tax benefits. However, the provision was dropped in conference, I am sorry to say. Deferral allows U.S. firms with foreign subsidiaries to defer the payment of U.S. taxes until the income is received by the U.S. parent in the form of dividends from that overseas company that they own. My amendment would also eliminate deferral in order to avoid a wholesale avoidance of repatriation by U.S. corporations in response to the change of the credit to a deduction.

One of the questions we must ask ourselves in this debate is the following. Does the United States have the primary right to tax its citizens, or do we want to give up that right to foreign countries? Foreign tax credits give that right away. Much like the Federal Government has retained its primary right to tax by allowing the deductibility of State and local taxes but not a credit—you cannot credit your income tax for those taxes that you pay to other jurisdictions—for them, the Federal Government should do the same for foreign countries. Not only will we retain this right for ourselves, but we will improve the American economy.

Mr. President, the tax bill before us is a giant step in the right direction. I believe my amendment will make it better. By providing greater relief to middle-income Americans without breaching the 15/27/33 rates in the bill, we can have the best of all possible worlds.

Mr. DECONCINI. Mr. President, at this time I send the amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. DECONCINI] proposes an amendment numbered 2107.

Mr. DECONCINI. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1371, strike out the matter between lines 10 and 11, and insert:

"If taxable income is	The tax is:
Not over $35,160	15% of taxable income.
Over $35,160	$5,274, plus 26% of the excess over $35,160.

On page 1371, strike out the matter between lines 14 and 15, and insert:

"If taxable income is	The tax is:
Not over $28,200	15% of taxable income.
Over $28,200	$4,230, plus 26% of the excess over $28,200.

On page 1372, strike out the matter preceding line 1, and insert:

"If taxable income is	The tax is:
Not over $21,120	15% of taxable income.
Over $21,120	$3,168, plus 26% of the excess over $21,120.

On page 1372, strike out the matter between lines 10 and 11, and insert:

"If taxable income is	The tax is:
Not over $17,580	15% of taxable income.
Over $17,580	$2,637, plus 26% of the excess over $17,580.

On page 1372, strike out the matter following line 18, and insert:

"If taxable income is	The tax is:
Not over $6,000	15% of taxable income.
Over $6,000	$900, plus 26% of the excess over $6,000.

At the end of title IX, insert the following new section:

SEC. . REPEAL OF FOREIGN TAX CREDIT AND FOREIGN INCOME DEFERRAL.

(a) REPEAL OF FOREIGN TAX CREDIT.—Subpart A of part III of subchapter N of chapter 1 (relating to foreign tax credit) is hereby repealed.

(b) REPEAL OF FOREIGN INCOME DEFERRAL OF CONTROLLED FOREIGN CORPORATIONS.—Section 952(a) (defining subpart F income) is amended to read as follows:

"(a) IN GENERAL.—For purposes of this subpart, the term 'subpart F income' means, in the case of any controlled foreign corporation, any income of such corporation not described in subsection (b), reduced (under regulations) by any deductions (including taxes) properly allocable to such income."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

On page 1956, strike "20 percent" and insert "21.25 percent".

Mr. DECONCINI. Mr. President, to continue just slightly on the basis that I believe the credit should be deductions as any other business expense, I know the arguments that will be put forward. One of them, of course, is we have done this a long time, that this is double taxation, that these taxes have been paid overseas to overseas governments and now you are asking them to be only deducted. But in fact, that is what we have. It works well in the fact that we pay our State and our local taxes, and we do not get a credit on our income tax. We get to deduct them. I for the life of me do not know why foreign overseas investments should be treated in any other way.

Let me just repeat a couple of points here on the break point moving from the 15-percent bracket, and increasing that by 20 percent. I went over the single filer, I went over the joint filer. Let me just say that heads of households under the Finance Committee bill at $23,500 would pay 15 percent, and below that. Anything above $23,500, the 27 percent starts to be paid. This amendment before us today by this Senator would increase that from $23,500 to $28,200.

A married couple filing separately, the 15 percent would apply to $14,650 under the present bill before us. Under the amendment from the Senator from Arizona, that would be increased to $17,580. It seems to me that the cost of business for taking away this tax credit of foreign income tax and changing it to a tax deduction is well worth it when you think about the tremendous impact this bill will have on those in the range of $20,000 to $40,000. It puts 20 percent more into the 15-percent bracket—not in numbers but in dollars. And this to me makes the bill fair to those people who are going to receive some benefit, and do receive some benefit even under the present Finance Committee bill but is going to receive a 20-percent better benefit under here without taking it away someplace else. I think the corporations and individuals that get a tax credit now ought not to be treated like any other business in the country, and should only be entitled to a deduction.

□ 1430

Mr. PACKWOOD. Mr. President, I would like to ask a few questions of the Senator from Arizona to make certain how the amendment works.

Let us assume a 50-percent tax rate, for purposes of the illustration. Under present law, if a company in the United States had $2,000 income upon which they paid tax, they would pay $1,000 tax. Are we OK so far? I want to make sure that our facts are followed as I use this example.

Mr. DECONCINI. Go ahead.

Mr. PACKWOOD. They pay $1,000 tax. The present law says that a company that operates partially in the United States and partially overseas would pay no more total tax than if they operated only in the United States.

My first question is, do you agree with that premise or do you want them to pay more taxes because they operate overseas in addition to the United States?

Mr. DECONCINI. They would pay more taxes under this amendment.

Mr. PACKWOOD. Here is what my good friend is now saying. Take the example of the company operating in the United States alone, with $2,000 income at 50-percent tax rate. They pay to the Government $1,000 and keep $1,000. We have encouraged, however, American companies to go overseas and compete in foreign markets. As I indicated last night in discussing the amendment of the Senator from Montana on taxing deferred foreign source income, almost all American companies that go overseas to compete do not go overseas for the purpose of sending goods back to the United States. That is a very, very small part of our imports. If we have foreign competition, the problem is foreign-owned company competition, not American-owned companies overseas.

Quite obviously, U.S. parts are shipped overseas and assembled and, in many cases, by U.S. personnel. We wanted to encourage this.

Under the present law, picture this situation. First I will use the example of the American company solely within the confines of the United States that makes $2,000, at 50 percent tax, $1,000 going to the Government.

Now assume you have an identical company but it operates partially here and partially in Great Britain. Say it is IBM and we will use the same $1,000 in comparison.

Let us say they make $1,000 in the United States and $1,000 in Great Britain. Great Britain's tax is 50 percent.

On the $1,000 they made in Great Britain, they paid Great Britain $500.

The way you calculate the tax in the United States is to take their worldwide income, which is $2,000, $1,000 in Great Britain and $1,000 here. To calculate the tax on this worldwide income of $2,000, you say what would the tax be if they made all the money in the United States at 50 percent? It would be $1,000. But then you allow a credit for the $500 they have already paid in taxes to Great Britain. So the company has made $2,000, $1,000 here and $1,000 in Great Britain. They paid $500 to Great Britain and they paid $500 to the United States. They paid $1,000 taxes on $2,000 income and they have paid no more taxes and no less than a company that operates in the United States that makes $2,000.

It is not a tax dodge. They have made $2,000 and have had to pay $1,000 in taxes.

I do not think my good friend from Arizona would deny the right of the United States to tax Honda, Toyota, Phillips, or any of the other companies that operate in the United States, nor do I think he would deny Great Britain the right to tax American companies that operate in Great Britain.

His issue is how we should treat a company that operates overseas in terms of their tax credit against U.S. taxes. Let Great Britain tax what they want, but how do we treat this tax paid to Great Britain in the United States.

Let me take the example I used before to show the change. A company making $1,000 in the United States and $1,000 in Great Britain.

Mr. President, I yield the floor for a moment to the Senator from Maryland, who has some very distinguished guests to introduce.

The PRESIDING OFFICER. The Senator from Maryland.

VISIT TO THE SENATE BY MEMBERS OF THE EUROPEAN PARLIAMENT

Mr. MATHIAS. Mr. President, the Senate is honored today by having a visit by the President of the European Parliament and a distinguished group of members of the European Parliament, who are visiting the United States.

Under the rules of the Senate, it is a great privilege to welcome them here. I ask unanimous consent that the Senate stand in recess for 3 minutes in order that the Members of the Senate can welcome the Members of the European Parliament.

The PRESIDING OFFICER. Without objection, it is so ordered.

Thereupon at 2:36 p.m., the Senate recessed until 2:39 p.m., whereupon the Senate reassembled when called to order by the Presiding Officer [Mr. NICKLES].

TAX REFORM ACT OF 1986

The Senate continued with the consideration of the bill.

Mr. PACKWOOD. Mr. President, now that I understand the full import of what the Senator from Arizona is about to do to American foreign trade, I simply am constrained to speak a bit further about what this is going to do.

□ 1440

Realize that the principal American companies that are successfully competing overseas put plants overseas, just for the same reason that Honda builds a plant in the United States: They build it because they want to be near the market. We have American companies all over the world that are in the German market, that are in the Spanish market, they are in the United Kingdom market. They build those plants there. They are net export earners for the United States. They help our balance of trade in two ways.

First, they help because in many cases, components are made in the United States and shipped to these countries for assembly. Sometimes it is because the countries have a domestic content law and they have to be assembled there, but for a variety of reasons. That helps our balance of trade.

Second, when the company brings the profits that it makes back to the United States, they pay a tax on it. They can defer their income, but eventually, they have to bring it back to the United States, because if they do not, they cannot declare it as dividends. If they just keep it overseas and never declare it as dividends, their shareholders get somewhat unhappy after a while.

What the Senator from Arizona would succeed in doing is driving every American company that operates overseas successfully, that helps our balance of trade, off foreign shores onto the U.S. shores. They would have to try to compete by exporting and that is the area where we have been losing.

This is why it would happen. I want to go back to the example I used: An American company in the United States making $2,000, pays 50-percent tax; $1,000 to the Government, $1,000 the company keeps. Take exactly that same company. That company says to itself, "In order to capture part of the British market, we are going to move part of our operation overseas because we don't think we are going to be able to compete in the British market if we don't get into the country. We'll have our plant there."

The same company now operates in Britain and in the United States. It makes $1,000 in the United States, it makes $1,000 in Britain. Britain levies a 50-percent tax—$500. The United States Government calculates the tax on the American company by taking its worldwide income—it adds up everything it made in the United States and everything it made in Britain. That is $2,000. It say, "The tax on that is 50 percent, which is $1,000. But we will let you credit the tax that you paid overseas against your U.S. tax".

The company has not cheated the Government. It has still made only $2,000—$1,000 here, $1,000 in Britain. It has paid $1,000 in total taxes.

What the amendment of the Senator from Arizona would do is this: You take the $1,000 of income you made in the United States, you take the $1,000 of income you made in Great Britian, you pay your $500 tax in Great Britain. You add up all of your worldwide income for United States purposes—$2,000. You made $1,000 here, $1,000 in Britain. He would then have you deduct the tax that you made in Great Britain. You would deduct the $500 from the $2,000. You now have $1,500 left. Upon that $1,500 he would levy the 50 percent U.S. tax, $750. So this company, having made $2,000 total—$1,000 in Britain, $1,000 over here—would pay $1,250 in taxes instead of $1,000 in taxes. Had this company operated totally in the United States it would have paid only $1,000 in taxes.

What is going to happen to the IBM's of the world, the Techtronics and the Cascade Corp.? These companies who operate in a foreign country in order to serve a market overseas helps our balance of trade and helps our exports and brings money back. These companies will not be able to afford to continue to operate overseas if they have to pay infinitely more taxes than if they had operated solely in the United States.

Second, if they operate only in the United States, they are trying to compete in foreign markets by exports from the United States instead of being in the foreign market. That is where we have not been nearly as successful. What the Senator from Arizona is doing is talking about making our balance-of-trade deficits not $150 billion but $200 billion or $250 billion by punishing the most successful companies in America, the ones who have learned they can go head to head with the Japanese in an Australian market or the Germans in the Brazilian market because they locate plants there.

They are not going to be able to compete in those markets from the United States. His amendment is going to reduce the total profits of the company, the total money that will come back to the United States in taxes; it is going to worsen the balance of trade. How does that possibly help this country?

I am not prepared to move to table now, because others may wish to say something on it, but, Mr. President, this is the worst amendment we have had placed before us. This amendment is good. If you are really interested in helping, to drive our balance of trade up, drive our taxes down, and put people out of work—the Senator from Arizona can support it if he wants, but I cannot see how any American can benefit under this tax structure.

Mr. DECONCINI. Mr. President, I have the greatest respect for my good friend from Oregon. I happen to disagree with him here. We are faced here with a deficit in our trade of $127 billion, for several years now well over $100 billion. The Senator from Oregon makes my case: Do we want those jobs overseas? Or do we want those jobs in the United States?

This does it. It forces the companies that cannot make it overseas by having to take taxes that they pay overseas as a business expense and only as a deduction on their income tax that they pay in the United States instead of a credit.

Let me point out not only do a lot of these overseas companies make the $2,000 in the United Kingdom, as the Senator from Oregon says, but they may make another $2,000 in some country where the tax rate is, say, 32 percent. So if they pay a 50-percent tax rate, or let us use the hypothetical: Country A, where a multinational U.S. corporation does business, has a 60-percent income tax rate.

That company makes money there and it has to pay 60 percent. It could only get a credit for up to the 50 percent because that is what the law is and that is what the maximum rate is in the United States. That same company does business in country B, that has, let us say, a 32-percent or 30-percent tax rate. So again, they get a tax credit for that 30 percent that they pay.

Now go back to country A. They had a 10-percent unused tax credit because they cannot get more than what the

maximum rate is in the United States, which is 50 percent now. Under the bill that the Senate committee has produced, it is 33 percent, but 50 percent for our argument. There is 10 percent more.

They get to take that 10 percent, add it to country B, where this low rate was 32, and take it off at 42 as a tax credit.

That is not fair. Not only is that not fair, it encourages our companies in this country to go offshore. Whom do they employ when they go offshore? It would be nice if they employed or the major portion of their employees were American. They are not; they are foreign nationals, obviously so, often by law, but also by preference and for economic reasons.

That is one of the reasons they are there. Why should they not work in this country? Why should they not be encouraged to stay here and put Americans to work?

The Senator from Oregon says this is the worst thing he ever saw. I say the worst thing I ever saw is a deficit that is climbing at $127 billion per year and more and more jobs are being exported not goods. How are we going to export goods from this country if we do not manufacture them here, if it is not necessary that you do the maximum amount of production right here, within our own borders and boundaries?

Getting away from that argument—and I am more than happy to continue to debate it because I think the jobs argument for doing and building and manufacturing the products here far exceeds the argument that the good Senator from Oregon has, that we are going to make the deficit go up. I do not know how much higher the deficit can go than $127 billion in 12 months.

□ 1450

That is how much more we are paying than we are receiving. To me, that is bad. And look at the figures just quickly of how that has gone up. Ten years ago, in 1975, the country had a trade surplus of $8.9 billion. That means we were producing jobs. We were exporting far more than we were importing and less jobs were overseas in that same year. In 1981, just 6½ years ago, we had a trade deficit of $28 billion. That was really a disaster. We thought, where are we going with a $26 billion deficit. In 1985, as I pointed out, it was $127 billion, almost $100 billion more in the period of 6 years.

But getting to the argument of what this tax bill should do, and then I am prepared to go ahead and vote because I know the Senator has 78 other amendments and I am sure he would like to vote, look at the fairness of it. This idea of two tax rates is good. It is one that I have proposed and offered legislation on for a long time. I really think it creates incentive and it lowers the rate to a number of people. The 15-percent rate is a good beginning rate, and I encourage that and I am thankful that the Finance Committee had the courage to adopt it. My quarrel is that the people in the $20,000 to $40,000 rate ought to be increased. The way to do that is to raise that breakpoint, and that is what this amendment does. This money that we are going to recapture by no longer letting American corporations get a credit on their taxes that they pay overseas—still a deduction, still a business expense like any other business expense, and any other taxes they pay in the State of Arizona or anyplace else they get to deduct as a business expense so we are not eliminating it but it is no longer a tax credit—is going to be used to help the single taxpayer who now at $17,600 gets to pay 15 percent. And if he is over that it kicks into the 27 percent. That is going to be raised to $21,120.

I do not know what could be fairer. I do not know what could be more important for this country not only for trade, because jobs would be more likely to be created here, productivity would go up here, but the country is going to get more taxpayers into the 15-percent tax bracket and at the same time give a little incentive to the top bracket in bringing it down 1 percentage point.

So I only suggest to my colleagues, No. 1, this is a good bill, as I have said. The Senator from Oregon, as I have said, deserves and has my great admiration for putting it here. I am not here to gut this bill. I am not here proposing amendments that destroy it. I am here to make it better. I also happened to come across an idea that I believe has a lot of merit and that is to have jobs in the United States instead of overseas.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I rise to oppose the amendment of the Senator from Arizona, and I am not sure that everybody understands exactly what is taking place. First of all, just the mere fact that the sums involved are, as I understand, in the neighorhood of some $60 billion over 5 years—if the Senator from Arizona wishes to correct me on the exact amount, I would be glad to hear it.

Mr. DECONCINI. If the Senator will yield, I am advised by the Joint Tax Committee it is approximately $68 billion.

Mr. CHAFEE. $68 billion. Now, that money is coming from U.S. corporations, and it is coming from U.S. corporations that are able to remain competitive in the United States and in the world market because they have some international operations. This will affect all the companies that do some business abroad, some manufacturing abroad, even for parts that are integral to the unit that they produce in the United States and assemble in the United States. So it applies to the IBM's, it applies to the Fords, it applies to the Cross Pen Co., from my State that has a unit in Ireland. What I think is terribly important to remember at this point, Mr. President, is that there is some suggestion that the foreign country can impose an ultra stiff tax at a very high rate and then that U.S. company pays it and comes back and can take all that as a credit against the U.S. tax. I should like to clarify this point if I might, Mr. President.

The overseas taxes that are paid by the U.S. corporations can only receive a credit against their U.S. taxes on the same basis as their U.S. taxes would have been. In other words, if the country overseas levies a 70-percent tax rate, those total dollars paid cannot be brought back as a credit against U.S. taxes. The taxes can only be a credit at the same rate that the U.S. company is paying taxes in the United States, 46 percent or 40 percent or whatever it might be.

Mr. DECONCINI. Will the Senator yield for a question?

Mr. CHAFEE. Yes.

Mr. DECONCINI. What the Senator has said is correct, that you can only deduct, my understanding is, what the maximum rate is already. But if that same company also does business in another country that has a rate of, say, 30 percent, then the maximum they could deduct out of that country would be 30 percent but they can take the difference between the 50, the maximum in the United States, and the 70 they have to pay in the foreign country, which is another 20 percent, add it to the low tax country and get a full 50 percent there. That is unfair and in my opinion this bill addresses that problem.

Mr. CHAFEE. That may be. That may be. As I understand, the Senator is correct. The point is the U.S. company has found it profitable for their overall operations to have some ventures abroad. They would not be there just to pay taxes. They are there because they are making a profit, and that profit returns to the United States and helps maintain their competitive position. The passage of this amendment would impede, indeed be devastating. As the chairman of the Finance Committee has so ably pointed out, we have enough trouble trying to remain competitive in the world today, and thank goodness we have some companies that are returning money to the United States because they are able to remain competitive. Let us not do anything to kill that competitive edge that they have succeeded in attaining.

So I very strongly hope that should the Senator from Oregon, the chairman of the committee, move to table this amendment, the tabling motion will succeed.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I rise in opposition to the amendment of the Senator from Arizona, my friend and a person whom I respect highly.

I should like to make several points. First, this is not the ordinary, small, pick-up amendment. This is an amendment that can cost $75 billion—$75 billion.

Now, the second point I wish to make is that the foreign tax credit is simply a way to prevent the same income from being taxed twice by two governments with equal claims to tax.

If I am an American firm and I operate in Great Britain or Japan or Germany, they have a right to tax me because I am operating in that country. The United States has a right to tax me because my home office is here. The foreign tax credit is not a loophole. It is a way of offsetting taxes paid in one jurisdiction against taxes owed in another jurisdiction. In short, it is a way of assuring stability in a world trading and financial system. If we decided to eliminate foreign tax credits worldwide, you would have a situation where one country would be preying on another, manipulating tax rates, et cetera, and the result would be a serious downturn in world trade, which I do not think the distinguished Senator from Arizona would like to see.

The third point is that there is little question a $75 billion increase in taxes, 68 of which are on our most effective exporters and international competitors, there is little doubt that if they are taxed another $68 billion they are not going to do as well and the trade deficit is going to go up—I would argue up substantially.

□ 1500

Two final points, addressing two of the points offered by the distinguished Senator from Arizona.

A major energy company does not build a coal-fired generating plant in Mexico because of the foreign tax credit. They build that plant in Mexico because there is a demand and they can make money. The foreign tax credit is a way of stabilizing the international trading system and encouraging investment and encouraging trade.

The last point: The Senator from Arizona was concerned about one country having a higher tax rate than another and the parent company offsetting the lower tax rate against worldwide income. If that were his concern, he could have proposed a per-country limit on foreign tax credits. Of course, that presented a problem. That did not raise $75 billion.

I understand the motivation for changing the foreign tax credit to a deduction, but I hope we reject that, because it will increase the trade deficit. In my view, it will also make the foreign international trading system much less stable and lead to a dramatic downturn in world trade.

Mr. DECONCINI. Mr. President, I am prepared to move ahead.

I do not know how much worse our trade deficit could be. Maybe we can have a $200 billion or $300 billion trade deficit every year. Maybe the copper industry in Arizona will shut down completely, and in the rest of the country.

We used to be the biggest copper producer in the United States. We were one of the largest copper producers in the world, and we no longer are. Maybe steel will get worse if this amendment is adopted. Maybe there will be more foreign automobiles and television sets and other high tech business.

I submit that this amendment will encourage very strongly American industry to make things in the United States and export and compete, and at the same time give a tax break to those in the $20,000 to $40,000 income bracket. To me, that makes sense, when we are faced with a $127 billion trade deficit.

We are told that this bill is good, that we are going to make things better. I do not see anything in this bill that will help except the incentive of having lower rates. That is likely to help, but no one has said that would wipe out a $127 billion deficit in 1985, which is projected to be the same in 1986.

We have an opportunity to do a couple of things: One is to put more people into the 15-percent bracket, roughly 20 percent dollarwise into the 15-percent bracket, to lower the maximum 27 percent bracket to 26 percent; No. 2, to encourage jobs to come back to the United States, to encourage companies here not to invest overseas, because if they do, it takes all their taxes they pay over there, and get them a tax credit they have to pay here. They can only use it as a deduction.

Being a citizen of the United States is worth something. When you are overseas and are in trouble, who comes to get you if things turn in the wrong direction politically or economically? The United States does. How many millions of people want to be in this country? It is worth paying something for, particularly if you encourage jobs and manufacturing productivity in this country.

● Mr. LEVIN. Mr. President, I agree with Senator DECONCINI that the tax reform bill before us disfavors many middle income taxpayers and should be modified in order to do that. It was for that reason that I strongly supported the Mitchell amendment which was offered yesterday. However, there was a crucial difference between the Mitchell amendment and the amendment before us right now. The Mitchell amendment not only improved the tax treatment of middle income taxpayers, but it also improved the progressivity of the entire bill. The DeConcini amendment improves the tax treatment of middle income taxpayers, but at the expense of progressivity because it lowered the maximum rate from 27 to 26 percent instead of increasing it from 27 to 35 percent, as did the Mitchell amendment.

I would also like to compliment the Senator for looking to the foreign tax credit as a revenue source for his amendment. Clearly, this has been an area of abuse. The ambiguity between what is a royalty payment and what is an income tax is a particular matter of concern. This issue deserves attention standing on its own and should not be tied to the issue of the maximum rate.●

Mr. PACKWOOD. Mr. President, the Senator from Arizona is 100 percent wrong. What this amendment is going to do is drive foreign investment down in the United States, drive tax collections down in the United States.

This is a subject the Finance Committee has had hearings on over the years. I have yet to find an American company that went overseas for the fun of it. You have cultural differences, language differences, currency differences. It is more difficult to operate overseas and in the United States than just in the United States. It is much more difficult to operate in the United States, Germany, Great Britain, Japan, and Zambia, with all the cultural differences and language differences. They would rather operate here and export overseas. That is the easiest thing to do, but it does not work. We have discovered that it is much better to sell overseas when our plants are there.

Let us take my favorite example, Tektronix, an electronic company in Portland, OR. Let us say it employs 1,000 people. It actually employs multithousands.

They say to themselves: "We have been exporting, but gradually we are losing our export market to companies located in the country we try to export to."

So, let us say they put a plant in Japan, and that plant employs 1,000 people, and they sell from that company to the Japanese market. Very little comes back to this country from our American companies overseas.

Those 1,000 employees in Japan provide another 100 or 200 jobs at the headquarters in Portland, OR, that would not exist but for the plant being

in Japan. If you close the plant in Japan and try to manufacture everything in Portland and export it, you will not succeed, and you are going to lose the 200 jobs the Japanese plant has created as secondary employment in Oregon.

That is going to happen to International Harvester, Caterpillar, General Electric, IBM—any company that operates overseas divisions, if you force them to do that. They are going to lose markets and employment, and we will lose taxes.

Mr. President, I move to lay on the table the amendment of the Senator from Arizona, and I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. DANFORTH). Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the amendment of the Senator from Arizona. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Idaho [Mr. SYMMS] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 92, nays 7, as follows:

[Rollcall Vote No. 141 Leg.]

YEAS—92

Abdnor	Glenn	Mitchell
Andrews	Goldwater	Moynihan
Armstrong	Gorton	Murkowski
Baucus	Gramm	Nickles
Bentsen	Grassley	Nunn
Biden	Harkin	Packwood
Bingaman	Hart	Pell
Boren	Hatch	Pressler
Boschwitz	Hatfield	Proxmire
Bradley	Hawkins	Pryor
Bumpers	Hecht	Quayle
Byrd	Heflin	Riegle
Chafee	Heinz	Rockefeller
Chiles	Helms	Roth
Cochran	Humphrey	Rudman
Cohen	Johnston	Sarbanes
Cranston	Kassebaum	Sasser
D'Amato	Kasten	Simon
Danforth	Kennedy	Simpson
Denton	Kerry	Specter
Dixon	Lautenberg	Stafford
Dodd	Laxalt	Stennis
Dole	Leahy	Stevens
Domenici	Levin	Thurmond
Durenberger	Long	Trible
Eagleton	Lugar	Wallop
East	Mathias	Warner
Evans	Matsunaga	Weicker
Exon	Mattingly	Wilson
Ford	McClure	Zorinsky
Garn	McConnell	

NAYS—7

Burdick	Hollings	Metzenbaum
DeConcini	Inouye	
Gore	Melcher	

NOT VOTING—1

Symms

So the motion to lay on the table amendment No. 2107 was agreed to.

□ 1530

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. McCLURE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. Mr. President, may we have order?

Mr. DOLE. Mr. President, I indicated a little bit before 3 that I hoped by 3:30 we would be able to make some announcement about the remainder of today, tomorrow, and thereafter.

We are in the process on this side—I have asked that it might be done on the other side—of going back to each Senator who has indicated they have one or more amendments to see if we can reduce that list.

It seems to me that perhaps if we can do that, we might be able to plan on where we are going from here. I am advised by the chairman that he plans to be here tomorrow. There will be votes tomorrow. We will be in this evening.

I would like to make that effort. Again, after we have been able to go through on our side, then I will go to the distinguished minority leader and try to sit down with him and say, OK, we have been able to reduce ours by 10, 15, hopefully 50 amendments. If that is the case, then we might be in a little better position to reach some agreement.

We have been in late 2 nights running. I think there are a lot of Members who would like to not stay so late this evening.

But let me visit with the distinguished minority leader hopefully by 4:15. Then we can come back.

Mr. BYRD. Mr. President, I will be happy to visit with the distinguished majority leader.

The PRESIDING OFFICER. Will the minority leader withhold? The Senate is not in order.

The Democratic leader.

Mr. BYRD. Mr. President, on our side, Members are coming to the floor, and are being urged to try to work out their amendments so they do not get caught, as I said earlier today, in a last-minute jam. I do not know when that last-minute jam might occur. Whether it is tomorrow or Monday or whatever, there will be a last-minute jam. If Senators on both sides do not call their amendments up, at the last minute—whenever it comes—there will be some Senators who have amendments and who will want some time on them.

We are doing all we can on this side to cooperate. I am pleased with the fact that several Senators on this side have offered amendments, and others are ready to offer amendments.

We will continue to work in that direction. I will be glad to meet with the majority leader.

Mr. DOLE. I thank the distinguished minority leader.

There is still another option; that is, not to offer the amendment. That is the preferred option on both sides. On this side this thing is going so smoothly we would like to complete it, or at least get to third reading by tomorrow afternoon, or midafternoon. And I know many of the amendments are important. But the idea, as has been suggested on both sides, is that there will be no more amendments. And we will start the tabling process. But that sounds good at first. When you start to think about it a while, somebody may not like that. They might decide, well, if you table my amendment, I will have one more. And we will not vote on that one today or tomorrow.

So we want to try to work out a little friendlier way to do this. Also, if anybody has any suggestions about how to bring this to an end, we have a suggestion box in the back. [Laughter.]

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. PACKWOOD. Mr. President, will the majority leader respond? Will there be any possibility—and I will ask the minority leader also—of at least a unanimous consent that we not consider amendments not filed past a certain time?

The reason I ask that is we may be able to get a time agreement on all kinds of amendments if we know what they are. I am a little reluctant to agree to a time agreement. You might get an amendment that relates to the Tax Code. Well, most of them do. But if we could have them filed, I think we can make some progress.

Mr. DOLE. I think that is an excellent idea.

Some indicate to me they have amendments, and when I ask when they will bring it up, they say maybe tomorrow. Well, maybe if they are ready to do it, if they would at least file, that would give the managers an opportunity to take a look at the amendment. Then we may be able to decide if we want to accept it. We may decide that we cannot accept it. Then they may decide to modify it. But maybe that is the request we can entertain a little later.

Mr. BYRD. Mr. President, the distinguished manager of the bill directed his remarks in part to me.

We will be happy to explore that possibility over here. It is a good suggestion. We will get back to the majority leader on the matter.

AMENDMENT NO. 2109

(Purpose: To allow individual retirement accounts to acquire certain gold and silver coins issued by the United States)

Mr. McCLURE. Mr. President, I send an amendment to the desk on behalf of myself, Senator SYMMS, and Senator HECHT, and ask for its immediate consideration.

□ 1540

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Idaho [Mr. McCLURE] for himself, Mr. HECHT, and Mr. SYMMS, proposes an amendment numbered 2109.

Mr. McCLURE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2143, between lines 16 and 17, insert the following new section:

SEC. . ACQUISITION OF GOLD AND SILVER COINS BY INDIVIDUAL RETIREMENT ACCOUNTS

(a) IN GENERAL.—Section 408(m) (relating to investment in collectibles treated as distributions) is amended by adding at the end thereof the following new paragraph:

"(3) EXCEPTION FOR CERTAIN COINS.—In the case of an individual retirement account, paragraph (2) shall not apply to any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31 or any silver coin described in section 5112(e) of title 31."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to acquisitions after December 31, 1986.

Mr. McCLURE. Mr. President, the amendment offered by myself for Senator SYMMS and cosponsored by Senator HECHT will allow legal tender gold and silver coins minted by the United States to be used as IRA investments.

On October 1 of this year the U.S. Treasury will make available to the general public, for the first time in many years, gold and silver bullion coins. These coins are the result of many years of hard work by myself and others in this body. There will be four gold bullion coins and one silver coin. The gold will be denominated in 1 ounce, one-half ounce, one-quarter ounce, and one-tenth ounce. The silver will be 1 ounce.

Mr. President, many predict there will be great demand for these coins. Some estimate that most of the market currently held by foreign coins, such as the South African Krugerand, Canadian Maple Leaf, and Mexican Libertad, will be replaced by the U.S. coins. I am also confident that many individuals who have never invested in coinage will invest in the U.S. coins.

Many citizens have expressed a great desire to buy these gold and silver coins as investment tools for individual retirement accounts. However, in the Economic Recovery Tax Act of 1981 a provision was added to prohibit investment in collectibles. There was concern that investors would want to hold their collectibles making it difficult to police whether or not the investment existed.

Mr. President, we have taken care of this concern with our amendment by limiting the coinage investment to only the gold and silver coins under title 31, section 5112. In addition, we have limited the investment to only individual retirement accounts. Therefore if an individual wanted to invest in the gold and silver coins, such investment would have to be held by a trustee and could not be held by the individual investor. We felt this was a good compromise to avoid any concern that existed in 1981.

This amendment provides investors with another alternative. In addition, gold and silver has always been a popular investment and Americans should be given the opportunity to choose what they want as an investment.

Mr. President, the Joint Committee on Taxation has reviewed this amendment and determined that it is revenue neutral and will not cost the Treasury any money. It does not change who is eligible to invest in IRA's or change any of the rules governing control over IRA investments. It simply allows U.S.-minted gold and silver coins to be used as IRA investments. All the rules that apply to other IRA investments will also apply to the gold and silver coinage.

The mining industries in the United States have been in a depressed state for many years. In my State of Idaho thousands have lost their jobs due to low prices and subsidized foreign imports. I have no illusion that this amendment will solve all problems in the hard rock mining industry. However, this amendment not only makes economic sense but will provide some relief for these depressed industries by increasing the demand for these precious metals.

Mr. President, an important aspect of this amendment that is not evident on its face, is that the gold to be used in minting these coins must come from certified domestic sources. Therefore, it is impossible for investors to purchase South African gold as an IRA investment. In addition, the silver to be used must come from U.S.-stockpiled silver. This will avoid any concern some may have over foreign sourced metals being used.

Mr. President, this amendment is simple and straightforward. It provides another opportunity for Americans to invest in U.S.-minted gold and silver coins. I encourage my colleagues to support this amendment.

Mr. SYMMS. Mr. President, the joint committee estimates that this amendment has no revenue impact. The amendment is important to the mining industry in my State which is currently in a severe depression. The American silver industry has been on its back due to increased world production and reduced silver consumption. Since 1977, world silver demand is down 99 million ounces while the total world supply has increased by 25 million ounces. The amendment will increase the demand.

The amendment will only allow for the deposit of U.S. 1-ounce, half-ounce, quarter-ounce and tenth-of-an-ounce gold bullion coins and a new 1-ounce silver coin. These U.S. coins will be minted by the Treasury beginning October 1.

The most important thing to keep in mind is that the amendment has no revenue impact. Without any cost, we can help a depressed industry that just wants to get back on its feet. There are very few amendments that have this dual benefit.

The provision will broaden the options investors face when they are considering IRA's. Again, there is no cost—this only allows the individual an option to invest some of his IRA funds in U.S. gold and silver coins if so desired.

The amendment requires that the coins be held by a trustee, just as any other asset in an IRA.

Finally, I want to say that this amendment will help the silver industry get back on the road to prosperity. The biggest problem for silver is the current lack of demand at a time of world oversupply. We can begin to stimulate demand without any cost to the Treasury.

I would ask my colleagues to support this amendment.

Mr. McCLURE. Mr. President, I am prepared to answer any questions anyone might have.

Mr. BENTSEN. Mr. President, we have no objection on this side.

Mr. McCLURE. Mr. President, I ask unanimous consent that Senator EXON be added as cosponsor.

THE PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, am I correct in my understanding that this has no revenue impact?

Mr. McCLURE. It has no revenue impact, according to the Joint Committee on Taxation.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2109) was agreed to.

Mr. McCLURE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CRANSTON. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ANTI-APARTHEID ACTION ACT OF 1986

Mr. KENNEDY. Mr. President, the House of Representatives has done the bold thing and the right thing on South Africa, and I intend to do all I can to see that the Senate follows suit.

In unequivocal terms, the House bill puts the United States squarely on the side of racial justice and human rights in South Africa. We have had enough timid responses and halfway measures from Congress and the administration. Apartheid is the problem and divestment is the answer.

For too long, we have permitted inaction in Washington to be misread as acquiescence in Pretoria. In effect, the United States has become the accomplice of apartheid. It is time now for the administration to match its action with its rhetoric. As the cochairman of the British Commonwealth Mission has succinctly put it, we are not trying to bring South Africa to its knees, but to its senses.

There is distressing irony in the events that took place yesterday. At the very moment the House was giving its answer to the violence of recent weeks in South Africa, President Reagan's representative at the United Nations was giving a different answer—by vetoing a Security Council resolution calling for sanctions against South Africa.

It is bad enough that the administration rejects United States economic sanctions against South Africa. It is far worse for the administration to do South Africa's dirty work at the United Nations by blocking international sanctions.

The administration's policy of constructive engagement has been tested and found wanting. Now, a new day is dawning in American policy toward South Africa, and I hope that the administration will decide to be part of it.

Before Congress adjourns this year, I intend to see that the Senate votes on the bill enacted by the House. To this end, along with Senators CRANSTON and WEICKER, we will be introducing a separate Senate bill identical to the measure adopted by the House. This bill will be referred to the appropriate committee or committees of jurisdiction in the Senate, and the committees will have ample opportunity to consider this historic measure.

But to insure that Senate committee consideration does not become a pretext to bury the legislation, I also intend to take appropriate steps to place the actual House-passed bill directly on the Senate calendar when it arrives from the House of Representatives.

I hope that our Senate committees will consider this legislation and recommend it to the full Senate. But if they do not, the steps I am taking today will ensure that we still have the opportunity to take up the House-passed bill in its own right and on its own merits, and not just as an end-of-session rider to other legislation.

Before yesterday, few believed that the House of Representatives would adopt legislation calling for United States divestment from South Africa. Today, there are few who believe that the Senate will approve such far-reaching legislation. By September, we shall find out.

Mr. President, I do welcome the opportunity to cosponsor this legislation which passed the House successfully, and which will now be offered by the Senator from California.

Mr. CRANSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. CRANSTON. Mr. President, the House yesterday fired a shot against apartheid heard around the world.

It has declared, loud and clear, that just as America once said: "You can't do business with Hitler," America is now saying: "You can't do business with apartheid."

Now the Senate must back up this brave declaration.

Just as loudly and clearly. I am delighted that Senator KENNEDY, Senator WEICKER, and I are, joined together once again in this battle.

Because I believe even a single day should not pass after House passage of the Anti-Apartheid Act of 1986 without supportive action by the Senate, and because I believe that the Senate today, like the House yesterday, must send a message to South Africa and the world that the United States will not directly or indirectly, support or condone apartheid in any way, shape, or form—morally, politically, or economically.

Along with Senator KENNEDY and Senator WEICKER, I am today introducing, the historic antiapartheid sanctions measure which passed the full House without opposition yesterday.

I believe we have a moral obligation to act on this issue and to address the grave crisis confronting the people of South Africa.

The land of South Africa lies many thousands of miles away. But today our hearts are with those who are engaged in the struggle for survival, the struggle for freedom.

Together, we believe in freedom. We believe in democracy. We believe in dignity and the rights of men and women. As Americans, we recognize our national security interest in seeing a free and democratic state emerge from the repressive Pretoria regime.

The cynical among us have already concluded that the Senate will do nothing. But I am hopeful. I refuse to accept the harsh judgment that this distinguished body will not act on one of the great moral issues of our time.

I have heard it said that to take any action would be counterproductive. But we know that the voices of the oppressed cry out to us for leadership.

I have heard invoked generic principles against trade sanctions; I have heard quibbling and equivocating. But I know that we must not trifle with evil. I know that we cannot equivocate in the face of a new Hitler. I know that we cannot quibble and remain inactive in the face of the threat of a new genocide of men, women, and children.

Mr. President, we are on the brink of a terrible, terrible bloodbath in South Africa. Thousands of lives are at stake. The freedom and security of brave leaders like bishop Tutu and Alan Boesak hang in the balance.

We who have the power to act against this evil must do so. We must do so in the name of humanity. We must do so in our own hardheaded national security interests.

I have pressed this issue repeatedly from my positions on the Committees on Banking and Foreign Relations. I was honored last year to serve as floor manager of the bill which passed the Senate with more than 80 votes.

In the hours and days ahead I pledge to do all in my power to inform, influence, and persuade my colleagues to see that we do act, and that we do adopt, the strongest possible sanctions against the apartheid regime.

I will fight as hard as I can for the strongest possible bill in this body. And I believe the measure we are advancing today should be the point of departure for a prompt debate by the full Senate.

□ 1550

Mr. President, I send our bill to the desk and ask for its appropriate referral.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

The bill follows:

S. 2570

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Anti-Apartheid Action Act of 1986."

SECTION 1. PROHIBITION ON INVESTMENTS IN SOUTH AFRICA.

No United States person may, directly or through another person, make or hold any investment in South Africa.

SEC. 2. PROHIBITION ON IMPORTS AND EXPORTS FROM SOUTH AFRICA.

(a) IMPORTS.—Notwithstanding any other provision of law, no article which is the growth, produce, or manufacture of South Africa may be imported into the United States, except for those strategic minerals of which the President certified to the Congress that the quantities essential for military uses exceed reasonably secure domestic supplies and for which substitutes are not available.

(b) EXPORTS.—

(1) GENERAL RULE.—No goods, technology, or other information subject to the jurisdiction of the United States may be exported to South Africa, and no goods, technology, or other information may be exported to South Africa by any person subject to the jurisdiction of the United States. The prohibition contained in this paragraph shall apply to goods, technology, or other information of any kind, which is subject to controls under the Export Administration Act of 1979, the Arms Export Control Act, the Atomic Energy Act of 1954, or any other provision of law.

(2) EXCEPTION.—The prohibition contained in paragraph (1) shall not apply to exports described in section 6(g) of the Export Administration Act of 1979.

SEC. 3. PROHIBITION ON LANDING RIGHTS OF SOUTH AFRICAN AIRCRAFT.

(a) PROHIBITION.—The Secretary of Transportation shall prohibit the takeoff and landing of any aircraft by a foreign air carrier called, directly or indirectly, by the Government of South Africa or by South African nationals.

(b) EXCEPTIONS FOR EMERGENCIES.—The Secretary of Transportation may provide for such exceptions from the prohibition set forth in subsection (a) as the Secretary considers necessary to provide for emergencies in which the safety of an aircraft or its crew or passengers are threatened.

(c) DEFINITIONS.—For purposes of this section, the terms "aircraft" and "foreign air carrier" have the meanings given those terms in section 101 of the Federal Aviation Act of 1958.

SEC. 4. PROHIBITION ON IMPORTATION OF KRUGERRANDS.

No person may import into the United States any South African krugerrand or any other gold coin minted in South Africa or offered for sale by the Government of South Africa.

SEC. 5. ENFORCEMENT; PENALTIES.

(a) AUTHORITIES OF THE PRESIDENT.—The President shall take the necessary steps to ensure compliance with the provisions of this Act and any regulatons, licenses, and orders issued to carry out this Act, including establishing mechanisms to monitor compliance with such provisions, regulations, licenses and orders. In ensuring such compliance, the President may conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and production of all books, papers, and documents relating to any matter under investigation.

(b) VIOLATIONS.—Any person that knowingly violates the provisions of this Act or any regulation, license, or order issued to carry out this Act shall—

(1) if other than an individual, be fined not more than $500,000; and

(2) if an individual, be fined not more than $250,000, or imprisoned not more than 5 years, or both.

(c) ADDITIONAL PENALTIES FOR CERTAIN INDIVIDUALS.—

(1) IN GENERAL.—Whenever a person commits a violation under subsection (b)—

(A) any officer, director, or employee of such person, or any natural person in control of such person who willfully ordered, authorized, acquiesced in, or carried out the act or practice constituting the violation, and

(B) any agent of such person who willfull carried out such act or practice.

shall, upon conviction, be fined not more than $250,000, or imprisoned not more than five years, or both.

(2) RESTRICTION OF PAYMENT OF FINES.—A fine imposed under paragraph (1) on an individual for an act or practice constituting a violation may not be paid, directly or indirectly, by the person committing the violation itself.

(d) SEIZURE AND FORFEITURE OF AIRCRAFT.—Any aircraft used in connection with a violation of section 3 of any regulation, license, or order issued to carry out that section shall be subject to seizure by the forfeiture to the United States. All provisions of law relating to the seizure, forfeiture, and condemnation of articles for violations of the customs laws, the disposition of such articles or the proceeds from the sale thereof, and the remission of mitigation of such forfeitures shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this subsection, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or employee of the Department of the Treasury shall, for purposes of this subsection, be exercised or performed by the Secretary of Transportation or by such persons as the Secretary may designate.

SEC. 6. REGULATORY AUTHORITY.

The President may issue such regulations, licenses, and orders as are necessary to carry out this Act.

SEC. 7. DEFINITIONS.

For purposes of this Act—

(1) UNITED STATES.—The term "United States" includes the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(2) UNITED STATES.—The term "United States person" means any United States resident or national and any partnership, corporation, or other entity organized under the laws of the United States or of any of the several States, of the District of Columbia, or of any commonwealth, territory, or possession of the United States.

(3) INVESTMENT IN SOUTH AFRICA.—The term "investment in South Africa" means—

(A) a commitment of funds or other assets (in order to earn a financial return) to a business enterprise located in South Africa or owned or controlled by South Africa nationals, including—

(i) a loan or other extension of credit made to such a business enterprise, or security given for the debts of such a business enterprise;

(ii) the beneficial ownership or control of a share or interest in such a business enterprise, or of a bond or other debt instrument issued by such a business enterprise; or

(iii) capital contributions in money or other assets to such a business enterprise; or

(B) the control of a business enterprise located in South Africa or owned or controlled by South African nationals, in cases in which subparagraph (A) does not apply.

(4) SOUTH AFRICA.—The term "South Africa" includes—

(A) the Republic of South Africa;

(B) any territory under the administration, legal or illegal, of South Africa; and

(C) the "bantustans" or "homelands", to which South African blacks are assigned on the basis of ethnic origin, including the Transkei, Bophuthatswana, Ciskei, and Venda.

(5) BUSINESS ENTERPRISE.—The term "business enterprise" means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any corporation, partnership, or other organization which is owned or controlled by the Government of South Africa, as such ownership or control is determined under regulations which the President shall issue.

(6) BRANCH.—The term "branch" means the operations or activities conducted by a person in a different location in its own name rather than through a separate incorporated entity.

(7) SOUTH AFRICAN NATIONAL.—The term "South African national" means—

(A) a citizen of South Africa; and

(B) any partnership, corporation, or other entity organized under the laws of South Africa.

(8) CONTROL BY SOUTH AFRICAN NATIONALS.—For purposes of paragraph (3)(A), South African nationals shall be presumed to control a business enterprise if—

(A) South African nationals beneficially own or control (whether directly or indirectly) more than 50 percent of the outstanding voting securities of the business enterprise;

(B) South African nationals beneficially own or control (whether directly or indirectly) 25 percent or more of the voting securities of the business enterprise, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

(C) the business enterprise is operated by South African nationals pursuant to the provisions of an exclusive management contract;

(D) a majority of the members of the board of directors of the business enterprise are also members of the comparable governing body of a South African national;

(E) South African nationals have the authority to appoint a majority of the members of the board of directors of the business enterprise; or

(F) South African nationals have the authority to appoint the chief operating officer of the business enterprise.

(9) CONTROL BY UNITED STATES PERSONS.—For purposes of paragraph (3)(B), a United States person shall be presumed to control a business enterprise if—

(A) the business enterprise is operated by the United States person pursuant to the provisions of an exclusive management contract;

(B) a majority of the members of the board of directors of the business enterprise are also members of the comparable governing body of the United States person;

(C) the United States person has authority to appoint a majority of the members of the board of directors of the business enterprise; or

(D) the United States person has authority to appoint the chief operating officer of the business enterprise.

SEC. 8. APPLICABILITY TO EVASIONS OF ACT.

This Act shall apply to any United States person who undertakes or causes to be undertaken any transaction or activity with the intent to evade the provisions of this Act or any regulation, license, or order issued to carry out this Act.

SEC. 9. EFFECTIVE DATE.

The provisions of this Act shall take effect 180 days after the date of the enactment of this Act.

Mr. WEICKER. Mr. President, today Senators KENNEDY and CRANSTON and

I introduced legislation imposing economic sanctions on the Government of South Africa.

This legislation is identical to that which passed the House of Representatives unanimously yesterday.

Last month, we introduced legislation to impose limited sanctions and among other proposals, mandate a deadline for disinvestment from the South African computer industry if certain conditions are not met.

That initial bill is probably more acceptable politically to the U.S. Senate than total disinvestment. But I join many of my colleagues in believing that only total disinvestment and a withdrawal of American subsidization of apartheid will frame the sort of commensurate response demanded by the situation in South Africa.

What is that situation? It is very clear Mr. President.

One thousand seven hundred dead in 21 months, most of them black and most of them killed by security forces or the so-called vigilante forces that operate with the support of police.

In the region, South Africa has conducted raids on Zambia, Botswana, and Zimbabwe, extending and intensifying the radicalization of its opponents to the entire region.

Representatives of the 49 nations of the British Commonwealth, known as the Eminent Persons Group, ended their peace mission with a grim warning:

> For all the people of South Africa and of the subregion as a whole, the certain prospect is of an even sharper decline into violence and bloodshed with all its attendant human costs. A racial conflagration with frightening implication threatens. The uncoordinated violence of today could become in the not too distant future a major armed conflict spilling well beyond South Africa's borders.

No one questions the immorality of apartheid. Last September, President Reagan said:

> America's view of apartheid is simple and straightforward. We believe it is wrong. We condemn it. And we are united in hoping for the day when apartheid is no more.

I was pleased to read that the President backed up this sentiment with a call to South African President Botha urging restraint upon the anniversary of the Soweto uprising.

And what was Mr. Botha's response? In short, he thumbed his nose at President Reagan, closing the door to personal diplomacy and narrowing the options of those of us who seek a peaceful solution to this crisis.

Mr. President, the future of South Africa is on the horizon. We can approach that horizon, that place where majority will rule just as surely as the Sun rises and sets, as a friend to the people of South Africa or a friend to racist and temporary occupants of Pretoria. The choice is ours.

Several years ago, in testimony before the House of Representatives, Bishop Tutu said:

> America is a great country, with great traditions of freedom and equality. I hope this great country will be true to its history and its traditions, and will unequivocally and clearly take its stand on the side of right and justice in South Africa . . . we shall be free, and we will remember who helped us to become free.

I yield the floor.

Mr. BENTSEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

THE UNITED STATES AND MEXICO

Mr. BENTSEN. Mr. President, last week, I addressed the Senate concerning Mexico's financial crisis and talked about its being part of a broader political crisis for that country. Recent events in the United States have made it even more difficult to play the constructive neighborly role I believe we should be playing as Mexico works to resolve its most urgent political problems.

Mexico-bashing seems to be the latest fad in Washington. Several people recently have raised their voices and pointed their fingers at Mexico. A good many of the criticisms have been proven false and many of them have been retracted. But other accusations remain—disputed, unsubstantiated, but nevertheless poisoning our bilateral relations. The chorus of criticism is drowning out the individual voices calling for cooperation and calm. Yet it is only in an atmosphere of quiet trust that we can make any serious progress toward resolving these current problems.

No useful purpose is served by these strident attacks. Mexican officials, whose integrity or legitimacy has been questioned, are thrown on the defensive and embroiled in controversy, thus making it harder for them to make the courageous decisions which are necessary for Mexico's recovery.

These kinds of criticisms have aroused the fierce national pride, the fervent nationalism of Mexicans. That makes it harder for that nation to accept even the most helpful suggestions from the United States.

What would you do if you were the Chief Executive of another country, if you were the Chief Executive of Mexico, and all of a sudden you were under attack by the big neighbor to the North? You would resent it, you would react to it, you would respond to it. You would find it more difficult to operate from your own political base in your own country.

The only ones benefiting from these attacks are those on the left who promote anti-U.S. sentiments and now have a more receptive audience.

I was delighted to see some of the members of the administration speak up on this point. I think it is important that the President, the Secretary of State, and other officials indicate our sympathy with the problems, the economic problems, that are serious to Mexico and, in turn, serious to us.

Mexico is not the Philippines, nor is President de la Madrid President Marcos. Like it or not, the Institutional Revolutionary Party, PRI, dominates the politics of Mexico but it dominates it through a democratic process—that is quite rare in the developing—that includes regular elections and changes in those who hold power. Like it or not, we are going to have to work with President de la Madrid and we are going to have to do it for another couple of years if we are to have any joint solutions to our common probems.

Like it or not, another man will become President in 1988 after regular elections and we shall have to learn to deal with him.

We are not always going to find that our policies are in concurrence or agreement. That is the way it is between two major nations living side by side as neighbors.

This is a tough time for Mexico. It is a time when we should offer understanding and cooperation on the problems that we all agree exist.

It is not Mexico's fault that the price of oil has fallen or that oil is a major part of their economy.

In that regard, I am concerned about the departure of former Finance Minister Silva Herzog, a man for whom I had the greatest respect. He was unflinching in supporting the traditional means for resolving Mexico's financial disputes and paying its debts. I earnestly hope that his successor, Mr. Gustavo Petricioli, and other Mexican officials can work with the International Monetary Fund to bring about a satisfactory resolution of the payments problems.

The Mexican deficit is running about 12 percent of their GNP and the idea of some is that they ought to cut that in half and get it down to 6 percent. Mr. President, can you imagine what it would mean to the United States if we tried to cut our deficit as related to the GNP by one-half in 1 year? There is no way we could do it. We would have absolute chaos in this country. We cannot expect that of Mexico. Somewhere in between, we can find resolution of that so they can continue to make the progress they have made in paying on that debt.

At the present time, it is the poor people of Mexico who are suffering because of the lingering economic problems. All you have to do is drive down Reforma; and stop at a stoplight and watch the kids who climb up on the fenders of your car to wipe your windshield in hopes that you will hand

them a few pesos. They are looking for work.

Mr. BRADLEY. Would the Senator yield for a question only?

Mr. BENTSEN. I am happy to yield to my friend from New Jersey.

Mr. BRADLEY. I not only support the Senator's statement, but let me applaud the statement. Is it not true that it is not only the poor people of Mexico who are being hurt by current debt policies, and is it not also United States workers who lose their jobs because the export market in Mexico for United States goods has dried up?

Mr. BENTSEN. There is no question about that. All you have to do is go along that border and see on our side—the highest unemployment in the United States today is down in south Texas on the Mexican border. It is 22 percent. That is in metropolitan areas. I can show you a county, which includes Laredo, TX, that has a 36-percent unemployment rate. That is the highest in the Nation.

We share their problems. They spill over, one on the other.

Mr. BRADLEY. I have read the statistic that, because of the debt policy of the current administration—that being, pushing countries such as Mexico into deep recessions by cutting imports, stimulating exports to the United States and elsewhere.

The result of that policy has been a loss of United States jobs, numbering 400,000 jobs lost in the export sector alone, because Mexico and other countries in Latin America do not have the resources to buy exports. Then we have our banks that tell the Mexicans, "Divert your resources that you would use to produce goods and sell domestically in Mexico to Mexicans and sell those goods in the United States or elsewhere in order to get the dollars to repay the debt."

Mr. BENTSEN. That is correct. I have heard those same numbers and it gives me great concern. Obviously, it is adding to our own unemployment problem.

Mr. BRADLEY. And the number of jobs lost in the United States because of those imports from Mexico and other Latin American countries that have been required by banks is 600,000 jobs. So we are talking about a job loss in the United States of 1 million because of the debt policy of this administration. Let me tell the Senator I applaud him for calling for a change in this policy of austerity and challenging the people of Latin America to a growth policy.

□ 1600

Mr. BENTSEN. I share the idea that we have to see growth, and that is the way for them to ultimately get out of it and resolve their debt problems and see that they create employment in their country. One of the other problems we run into, of course, is that we are seeing countries like Japan with an incredible trade surplus and a big credit surplus. They are now the number one creditor in the world. Japan buys only 8 percent of the manufactured products of the lesser developed countries, while this country buys 62 percent of those products, and Europe buys 27 percent of them. They ought to take some of that burden off of us and increase their buying of manufactured products from those areas.

Another problem in Mexico is that not only are the poor suffering but the middle class is being absolutely decimated in Mexico today.

So we share many of Mexico's problems and concerns, not just across the border and along that border but throughout the United States. I think it is time that we curb the invective; that we cut back on the kind of attacks being made on the leadership of Mexico and try to find ways in a more calm atmosphere and a more cooperative atmosphere of a mutual and joint resolution of those problems.

Mr. HARKIN. Will the distinguished Senator yield?

Mr. BENTSEN. I will be delighted to yield.

Mr. HARKIN. I thank the distinguished Senator for yielding. I had not anticipated his remarks. I happened to be sitting here listening to them. I compliment the Senator from Texas for a very profound statement. It is very true that our destiny in this country is inextricably intertwined with the destiny of Mexico. I agree with what the Senator from Texas has said about the situation in Mexico and about how we ought to perhaps not be so anxious to be pointing our fingers at individuals in Mexico and at their government but, rather, ought to be seeking ways of working with them to relieve their debt burdens so that our two great nations can once again enjoy the type of interchange in our economies that will prove beneficial to both Mexico and the United States. I compliment the Senator from Texas for a very, very eloquent statement.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I congratulate the senior Senator from Texas on his statement dealing with Mexico. He has spent a great deal of time considering and dealing with the problems of Mexico and is indeed the leading authority here on our relationships with Mexico. We all look to him for guidance on these matters. I for one have been enlightened by what he had to say and appreciate the thoughtful statement he made. I should like to congratulate him.

Mr. BENTSEN. I thank my friend from Rhode Island.

Mr. HELMS. Mr. President, I do not propose to impinge upon the time of the distinguished managers of the tax bill, which, after all, is what we are here about, but I did not hear my good friend from Texas allude to the drug problem as is amplified by the corruption in Mexico. Now, there are some of us who are disturbed by the lack of interest in controlling that drug problem. There are both drugs and corruption in the United States, but we are trying to do something about it. Testimony showed that corruption in Mexico reaches to the highest levels of the government. There are also some of us who are worried about pumping billions of U.S. tax dollars into a Socialist economy, into a Socialist government which is a one-party government. All that does is hurt the Mexican people not help them. Now, I share the Senator's affection for the Mexican people; they are decent, hard-working people, and I think they need and deserve a chance to evaluate what is going on down there. Certainly, I believe the American people deserve to know what the problem is and why it exists and why it has grown to such enormous proportions. But Mexicans are afraid to talk about it in their country, and some Americans don't want to hear about it.

So I agree with the underlying thesis of the Senator's remarks, but I cannot agree with him that we should just proceed to do what we have done in the past to pump money in there when actually the flight of capital is a measurement of the lack of confidence of the Mexican people in their own government.

It is a valid subject for conservation at another time. I would be delighted to discuss it, not debate it, with the able Senator from Texas, whom I admire very much. But as I said at the outset, I do not propose we take a great deal of time when we are into consideration of the tax bill, but I thank the Chair.

Mr. BENTSEN. Mr. President, if I might just respond.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. I would say to the distinguished Senator from North Carolina, I obviously have been concerned about the drug problem wherever it emanates. I know that many drug dealers have used Mexico as a trampoline to bounce drugs from Colombia into Mexico and into the United States. I also know what a strong feeling of nationalism that Mexico has, as have we. They have a great sensitivity to public criticism from their neighbor from the North.

I also know that to an incredible degree they have allowed our drug enforcement officials to work in Mexico. Now, that is something really new for Mexico, to allow our people to come into Mexico and work within that country, yet they have done it to try

to cooperate with us. If we considered the reverse situation and thought of our accepting a very substantial number of their officers crossing our border and trying to enforce the law in our country, it would be awfully tough for us to swallow.

We will never get them to do all the things just as we would do them. I understand that. But they have done some things that are unprecedented in trying to control the drug menace. I also know that they have lost a great many of their drug enforcement officials, who have been killed in action trying to accomplish some of the objectives. I think we have to keep those things in mind as we try to work out our differences with them.

Mr. HELMS. If the Senator will yield, of course we do. I agree with that. But, on the other hand, I wish the Senator could have heard the testimony by the Commissioner of Customs for the U.S. Government, the DEA officials who testified that the smuggling is so bad that Mexican police cars are escorting the drug traffickers to our borders with the blue lights and the sirens. That does not sound very much like cooperation to me, I say to the Senator. And I might add that the testimony of the Commissioner of Customs on the situation in Mexico has never been retracted or proven false, despite dubious reports to the contrary.

I say again that I want to work with the Mexican people. I wish them the best. But at the same time I think the best interest of the United States lies in our making sure that the American people understand both sides of this.

Mr. BENTSEN. I think he is also the same Customs official whose accusation against a Mexican Governor, of growing marijuna on his ranches was proven erroneous. I also saw a situation down in San Fernando, where I used to have a house—that is about 100 miles south of Brownsville—where a number of Federal Mexican officials were killed in a shootout with smugglers when they tried to apprehend them. The drug smugglers killed many of the Mexican officials who were in that encounter. So we can sit here and trade success and failure stories at great length. But I would say to my distinguished friend, I can cite some of the same things in our country. I can look at the situation of how we handled an acknowledged Russian spy in our country, how we delayed in his apprehension and how he escaped. I have concern about how that was done, and yet I do not blame the leadership, I do not blame the President.

□ 1610

I think President de la Madrid has an incredible problem on his hands. The problem is due partly to previous administrations, and to the price of oil. I think it is going to be a tough situation for Mexico, and I do not think it will be resolved overnight.

I believe that we make our situation and President de la Madrid's situation more difficult with public attacks on Mexico.

I was born near that border, and I know the sensitivity they have toward their big neighbor to the North and how they recoil from the criticisms and how their people rally around their leaders in that country when that happens.

I know the attacks of the extreme left down there and how they are looking for ways and means of fanning the anti-U.S. sentiment that is among some people down there.

I will be delighted to discuss this at length.

TAX REFORM ACT OF 1986

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2111

(Purpose: To provide that certain deductions and credits not be allowed for expenditures within the Coastal Barrier Resources System and for other purposes)

Mr. CHAFEE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. EVANS). The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE] proposes an amendment numbered 2111.

Mr. CHAFEE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of subtitle B of title VII, insert the following new section:

SEC. . REDUCTION OR DENIAL OF CERTAIN TAX PREFERENCES FOR PROPERTY AND ACTIVITIES WITHIN UNITS OF THE COASTAL BARRIER RESOURCES SYSTEM.

(a) LIMITATION ON DEDUCTIONS.—

(1) IN GENERAL.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding at the end thereof the following new section:

"SEC. 280J. EXPENDITURES WITHIN UNITS OF THE COASTAL BARRIER RESOURCES SYSTEM.

"(a) COMPUTATION OF DEPRECIATION AND AMORTIZATION DEDUCTIONS.—Any deduction allowable under this chapter for depreciation or amortization for amounts paid or incurred for property used predominantly within a unit of the Coastal Barrier. Resources System shall be computed under the alternative system of depreciation under section 168(g).

"(b) CERTAIN DEDUCTIONS DISALLOWED.—None of the following deductions shall be allowed:

"(1) EXPENSING OF DEPRECIABLE ASSETS.—Any deduction allowable under section 179 for property used predominantly within a unit of the Coastal Barrier Resources System.

"(2) CASUALTY LOSSES.—Any deduction allowable under section 165 with respect to any casualty or disaster loss in connection with any property within a unit of the Coastal Barrier Resources System.

"(c) For purposes of this section, the term 'units of the Coastal Barrier Resources System' means those undeveloped coastal barriers located on the Atlantic and Gulf coasts of the United States that are identified and generally depicted on the maps that are entitled 'Coastal Barrier Resources System', numbered A01 through T12 (but excluding maps T02 and T03), and dated September 30, 1982 and the maps designated TO2A and TO3A, dated December 8, 1982 under the Coastal Barrier Resources Act of 1982, as amended (16 U.S.C. 3501 et seq.)."

(2) CONFORMING AMENDMENT.—The table of sections for part IX of subchapter B of chapter 1 is amended by adding after the item relating to section 2801 the following new item:

"Sec. 280J. Expenditures within units of the Coastal Barrier Resources System."

(3) EFFECTIVE DATES.—

(A) IN GENERAL.— Except as provided in this paragraph, the amendments made by this subsection shall apply to amounts paid or incurred after December 31, 1986, in taxable years ending after such date.

(B) TRANSITION RULE.— The amendments made by this subsection shall not apply to property—

(i) the construction or reconstruction of which began before July 1, 1986, or

(ii) which was acquired pursuant to a binding contract between the taxpayer and an unrelated person which was in effect on July 1, 1986, and at all times thereafter.

(b) APPLICATION OF AT-RISK RULES.—

(1) IN GENERAL.— Section 465(c) (relating to activities to which at-risk limitations apply) is amended by adding at the end thereof the following new paragraph:

"(8) Special rules for property located, or used, in a unit of the Coastal Barrier Resources System.—In the case of an area designated as a unit of the Coastal Barrier Resources System under section 280J(c)—

"(A) paragraph (3)(D) shall not apply to real property located within such unit,

"(B) for purposes of paragraphs (4) and (5), the term 'equipment leasing' shall not include the leasing of property to be predominantly used within such unit, and

"(C) for purposes of paragraph (7), the term 'excluded business' shall not include any activity which is conducted within such unit."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to losses occurring after December 31, 1986.

(c) DENIAL OF TAX-EXEMPT STATUS FOR CERTAIN GOVERNMENTAL OBLIGATIONS.—

(1) IN GENERAL.—Section 103(b) (relating to industrial development bonds) is amended by adding at the end thereof the following new paragraph:

"(19) Bonds used to finance facilities in a unit of the Coastal Barrier Resources System.—Paragraphs (4), (5), and (6) shall not apply to any obligation issued as part of an issue any portion of which is to be used for any facility located in a unit of the Coastal Barrier Resources System (within the meaning of section 280J(c))."

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by this subsection shall apply to obligations issued after December 31, 1986, unless issued pursuant to an inducement resolution adopted on or before July 1, 1986.

(B) EXCEPTIONS.—The amendment made by this subsection shall not apply to obliga-

tions issued for any of the following projects, but only if the obligations issued therefor are consistent with the purposes of the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3501 note):

(i) the establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

(ii) the maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly-owned or publicly-operated roads, structures, or facilities.

(iii) nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

Mr. CHAFEE. Mr. President, this amendment extends protection to those fragile islands along our Atlantic and gulf coasts which we call barrier islands or beaches.

As perhaps the Chair will recall, in 1983 we enacted measures to protect those valuable islands. There are about 1,900 miles of barrier islands and beaches along the Atlantic coast and the gulf coast. Of those, one-third are already considered developed. Another one-third of those are under protection in some form, be it the Federal Government, Fish and Wildlife, the Audubon Society. One-third of those islands have been designated by the Department of the Interior as undeveloped barrier islands.

In 1983, what we did was to say that no Federal funds could be spent to assist in the development of those islands. In other words, there could be no Federal funds for roads there, there could be no Federal funds for bridges, there could be no Federal funds for sewage plants, nor could there be any flood insurance provided for those who build in the future on those islands. That has succeeded in deterring development along those fragile sections. There are 186 sections in all, constituting some 600-plus miles.

What this amendment would do would be to go further to protect those islands against development. There are five features of this amendment.

First, it provides that there can be no accelerated depreciation used by developers who construct on the barrier islands and beaches. They can receive straight-line depreciation but not accelerated depreciation.

Second, there can be no expensing of what we call depreciable assets. Under the code, a small business, for example, can expense up to a certain amount of depreciable assets. This amendment would remove that provision on those facilities on these barrier islands constructed in the future—not those existing now—and only permit depreciation.

There would be no casualty loss deduction on property that is constructed in the future, after July 1, on one of these barrier beaches or islands. In other words, if you want to build a house there, it is your business; but if you lose it by a storm or something else, the Federal Government is not going to step in and say that you can have a deduction on your income tax.

Four, there is no exception to what we call the at risk rules for real estate. This is a technical term, and I do not want to get into all the definitions and nuances of it, but the at risk rule helps developers. We have tightened up on it in this amendment, and the at risk rule would not be permitted on these barrier beaches and islands.

Five, the tax exempt status in connection with industrial development bonds could not be used for new construction. If a county, city, or town wanted to use industrial development bonds to build a road or a sewage plant, they could not do so. If they wanted to use it for replacing an existing bridge or repairing a road that is there, that is all right, but not for a new one.

Mr. President, I want to clarify that these rules apply for the future. They do not affect any of the buildings that are already there. In other words, in the undeveloped barrier islands there are some homes, there is some development. It is not all raw land. There are some facilities, but not enough to qualify it as undeveloped.

Mr. President, I know there is some opposition to this, and I am prepared to hear that opposition.

In 1983, probably the finest step forward in the environmental field that we took was the protection of these valuable islands, which are important to the wildlife, to the ecology, to the bird life, and to human life, as a protection along our shores. They have been devastated in many instances. One-third of them are gone, but thank goodness, the U.S. Congress saw fit to act in 1983 to protect those areas as best we could.

If we had the money, we would buy them, but unfortunately we do not have the money, so we have taken the Federal Government out of the business of subsidizing the development. This is another step in taking the Federal Government out of the business of subsidizing it through the Tax Code.

Mr. DODD. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator yield the floor?

Mr. CHAFEE. I will take a question. I know that the Senator from South Carolina wishes to speak, but the Senator from Connecticut has a question.

Mr. DODD. Mr. President, I commend the Senator from Rhode Island for this amendment.

He is absolutely correct that along our shorelines in the United States, the east and west coasts, we have done a tremendous job in preserving for future generations an irreplaceable asset of this country which is delicate and fragile. Excessive development could destroy that delicate balance.

If I correctly understand the amendment, there is nothing in the amendment that would prohibit a developer from going in to develop on private property on these shorelines. The only thing the amendment does is remove the Federal Government from subsidizing the infrastructure that would create greater possibilities for the development to occur. Is that generally the thrust?

Mr. CHAFEE. That is correct, with one exception, and that is for the individual house owner as opposed to the developer through some business. The individual homeowner would not be permitted to have a casualty loss deduction if he suffers a loss to the home through a storm.

Mr. DODD. But nothing in this amendment would prohibit a developer from developing private property on these islands, except that the Federal Government would not assist in the subsidizing of the development.

Mr. CHAFEE. The Senator from Connecticut is right. I appreciate his support.

Mr. President, I ask unanimous consent to add the names of Senator STAFFORD and Senator KERRY as cosponsors.

The senior Senator from Massachusetts indicated that he was interested in it, and I should have notified him that we are bringing it up.

I have discussed this with the Senator from Texas [Mr. BENTSEN], with whom we worked very closely when we passed this legislation in 1983. He is not objecting to this. It is my understanding that the senior Senator from Louisiana finds this acceptable. I do hope that it will receive favorable consideration.

Mr. DODD. Mr. President, I ask unanimous consent that my name be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE. I appreciate that.

Mr. THURMOND. Mr. President, I oppose this amendment, and I am authorized to say that the Senators from Alabama [Mr. DENTON and Mr. HEFLIN]; the Senators from Georgia [Mr. NUNN and Mr. MATTINGLY]; the Senators from North Carolina [Mr. HELMS and Mr. EAST]; the Senator from Texas [Mr. GRAMM], and others join in this expression of objection to this amendment.

□ 1620

Mr. President, the distinguished Senator from Rhode Island has offered this amendment to the tax bill which could adversely affect development in coastal areas of my State and many other States. The amendment would go beyond the current Senate tax proposal to limit the use of tax

provisions related to commerce in coastal barrier areas.

The 1982 Coastal Barrier Resources Act designated 176 coastal areas as being ineligible to receive Federal grants relating to development, such as those of sewage treatment, highways and bridges, also VA and FHA insured mortgages and Federal flood insurance. The act mandated the Department of the Interior to report to Congress concerning the changes to the act.

The draft report recommended wide changes to the system, including expanding the coastal barrier umbrella to over 7 million acres. The Interior report will be ready for congressional consideration later this year.

Mr. President, there has been no final report. I hold in my hand the draft report. Certainly the Members of Congress have a right to consider the report when it comes in. After all, as I stated, this will involve 7 million acres. That is a lot of land to be involved.

Now, the owners of property in the coastal barrier areas have already been affected to a great extent. One hundred sixty-seven coastal areas are now ineligible for the matters that I just stated. They cannot get Federal grants for sewage treatment plants, highways, and bridges. They cannot get any Federal assistance for VA and FHA insured mortgages and Federal flood insurance. Now if this amendment would pass it would punish these landowners still more. How far do we want to go in punishing people?

Mr. President, I urge every Member of the Senate to oppose this amendment on coastal barriers. In the first place, it has no place in this tax bill. I have gone along with Senator PACKWOOD on this matter and voted against all amendments, and I am convinced that this amendment is offered here to affect this tax bill.

This amendment could take hours and hours, maybe days and days because a great many of us feel very strongly about it.

Now we think the matter should be brought up later and then it could be considered carefully by the appropriate committees and Congress could take proper action.

But to bring it up on this tax bill which concerns so many important matters and which could delay this tax bill for days and days we feel would be very unwise.

Mr. President, I want to say furthermore the Department of the Interior study and report on changes to the coastal barrier system will not be available until later at which time Congress can consider it.

This draft report here recommended, for instance, that 62,697 acres in the State of South Carolina may be eligible for incorporation into the coastal barrier system and 13.3 miles of coastline in the coastal barrier system.

Before changing the Tax Code relative to coastal barriers should not Congress have the advantage of reviewing this report and evaluating the implementation of the Coastal Barriers Resources Act?

The final report will also address the use of tax incentives and their significance in coastal barrier areas.

Completion of this report has taken several years and has included public hearings and a lengthy comment period. Why circumvent this careful and deliberate public process?

Next, Mr. President, the current Senate tax proposal already severely limits the use of the Tax Code to encourage development in any part of the country, including coastal barriers. There is no evidence to demonstrate that further Tax Code changes will indeed provide any further level of protection for coastal barriers. Additionally, there is no evidence to support that those specific provisions in the proposed Chafee amendment are somehow responsible for development in coastal areas and next, Mr. President, commerce in coastal areas should not be discriminated against.

The concept of the Chafee amendment came from Senator CHAFEE's bill, S. 1839, which, removes the use of certain tax provisions for activities in so-called environmentally sensitive zones. Yet this Chafee amendment to the tax bill only relates to coastal barrier areas. Certainly, activities related to exploration and development of natural resources near wilderness areas and national parks as outlined in S. 1839 pose more serious environmental questions than the carefully limited development, limited already due to the Coastal Barrier Resources Act and other Federal and State protection laws for some coastal barrier areas.

Mr. President, the Chafee amendment is premature at this time. Careful congressional consideration of the Coastal Barrier Resources Act should take place before tinkering with its complexity.

Mr. President, as I state, a large number of Senators are vitally interested in this matter and it could take hours and days to consider this matter. I would hope the Senator would consider withdrawing this amendment so that careful consideration can be given to it and then Congress would be in a position to take appropriate action.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, I would point out something I should have noted in my original remarks, and that is as follows: There are the concerns that the Senator from South Carolina raised about the report of the Interior Department about possible future additions to these barrier beaches and islands to the undeveloped sections and recommendations that they be included under the same protection that we are now giving under the 1982 law to those undeveloped sections. He is absolutely right that such a report is provided for in the 1982 act. We asked the Interior Department to study the situation further and that possibly there are other sections that should be added.

In anticipation of that, my amendment that I sent forward to the desk specifically provides that any sections that are added in the future could only receive the protection of this amendment if the amendment were passed subsequently to protect them. In other words, the amendment only applies to those sections that are already designated undeveloped area beaches. It does not apply to any additions that might come along and clearly those circumstances could only be added not by some study from the Interior Department but by a vote of Congress.

I stress to the opponents of this measure that if there are any subsequent additions that come about through a vote of Congress my legislation that I am presenting today would not cover those sections. It would only cover those that are already designated, the 176 units that the distinguished Senator from South Carolina referred to, those that are there now.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I thank the Chair for recognizing me.

Mr. President, the able Senator from South Carolina [Mr. THURMOND] adequately described the nature of the opposition to this amendment. In the first place, this is in the middle of a tax bill that I assume all of us want to pass as soon as possible. I have had some doubt about that as I watched some lengthy speeches during the past few days.

In any case, Mr. President, I will have to join the Senator from South Carolina in cautioning that if the Senator from Rhode Island persists in this amendment, there will be a great deal of enlightening debate that may take days or longer.

Furthermore, Mr. President, this involves changing the rules in the middle of the game for an enormous number of people.

□ 1630

I do not think we want to do that on a tax bill. In North Carolina, this amendment could ultimately affect over 235,893 acres. How many people this would affect, I simply do not know.

But I wonder if the Senator from Rhode Island would agree that it

would be appropriate for these people who will be affected, or who perceive that they will be affected, to have a chance to testify before his committee and to analyze precisely what the impact will be. All of us want to do the right thing about various matters. The Senator is very much interested in this kind of legislation. I am interested in various kinds of legislation.

The Senator from Oregon, the distinguished manager of this bill, knows that I have a hat full of amendments that I would be delighted to offer. But I told him at the outset—and I think he will verify what I have said—that I am going to withhold because I want a tax bill. I do not want this bill to be a vehicle for my personnel interests. I want tax reform. And I do not think we are going to get it with amendments like this.

I wonder if the Senator would consider withdrawing his amendment, with the understanding that a hearing will be held and that the matter will be studied under somewhat more appropriate circumstances. I mean no disrespect to the Senator. He knows that.

Mr. CHAFEE. Mr. President, the Senator from North Carolina said that we are changing the rules in the middle of the game. I would stress that under the amendment I have presented it is prospective. In other words, it does not apply to somebody who has a house there now. If you have a house there now and the house is washed away, on a barrier island or a beach, you are entitled to a deduction as a loss on your income tax statement. So it goes for a developer. If his building is there already, he can take accelerated depreciation. It is prospective.

Nonetheless, I recognize the situation here. I know that the Senators from South Carolina and North Carolina both have supported this effort when we formed those barrier islands and beaches. I remember an excellent speech that the Senator from South Carolina gave when we passed that barrier islands land legislation. I also remember the distinguished senior Senator had no objections and indeed might have been a cosponsor by the time we finished. I cannot recall. But, in any event, he certainly did not object.

In that spirit, and recognizing that none of us want to hold up this tax bill and we want to achieve the goal, which is passage, at least in this instance, passage of the protection for these islands in the future through the Tax Code sections that I delineated, I would be willing to withdraw my amendment.

I hope that both Senators and those other Senators that they mentioned would cooperate in trying to find a solution to this matter. We have a serious problem. It is true that we have given a good deal of protection through the steps we have taken. But these islands are important to the whole Nation.

After all, I come from a State that has them, so I have as deep a concern as anybody, as the Senator from North Carolina has, likewise.

Mr. PACKWOOD. Mr. President, I thank the Senator from Rhode Island, because I can verify tht there are four or five others who would be coming to speak at some length on his amendment. It is not just the Senator from South Carolina and the Senator from North Carolina.

We are rounding, I think, the final turn on this tax bill. I very much appreciate it. I can guarantee him there will be hearings. But, in the spirit of comity, if he is willing to take it down, it means a great deal.

Mr. CHAFEE. Hearing the chairman of the committee state his willingness to have hearings on this is certainly encouraging to me.

Mr. President, I ask unanimous consent that I may be permitted to take down the amendment.

The PRESIDING OFFICER. The Senator has a right to withdraw his amendment.

Mr. THURMOND. Mr. President, I wish to thank the able Senator from Rhode Island for taking down his amendment so Congress can further consider this important matter.

Mr. CHAFEE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2112

(Purpose: to provide for the indexing of trade or business property sold by individuals age 55 or older and to impose a tax on mergers involving corporations of more than $250,000,000)

Mr. HARKIN. Mr. President, I have an amendment which I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, Mr. ANDREWS, Mr. MELCHER, and Mr. PRESSLER, proposes an amendment numbered 2112.

Mr. HARKIN. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the end of subtitle A of title VII, insert the following new section:

SEC. . INDEXING OF BASIS OF TRADE OR BUSINESS PROPERTY SOLD BY INDIVIDUALS AGE 55 AND OVER.

(a) IN GENERAL.—Part IV of subchapter 0 of chapter 1 (relating to special rules for determining basis) is amended by redesignating section 1060 as section 1061 and by inserting after section 1059 the following new section:

"SEC. 1060. BASIS OF TRADE OR BUSINESS PROPERTY SOLD BY INDIVIDUALS AGE 55 AND OVER.

"(a) GENERAL RULE.—If an individual has attained age 55 before the sale or disposition of any qualified trade or business property, the basis of such property solely for purposes of determining gain (but not loss) from such sale or disposition shall be increased by an amount equal to the product of—

"(1) the portion of the adjusted basis of such property (determined without regard to this section) which bears the same ratio to such adjusted basis as—

"(A) $500,000, bears to

"(B) the total sales price of such property, multiplied by

"(2) the inflation adjustment.

(b) REDUCTION IN $500,000 LIMIT.—The $500,000 amount in subsection (a)(1)(A) shall be reduced (but not below zero) by the amount by which the total sales price, when added to the aggregate sales price of all qualified trade or business property previously sold or disposed of during the taxable year, exceeds $1,000,000.

(c) QUALIFIED TRADE OR BUSINESS PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified trade or business property' means any real property located in the United States—

"(A) which on the date of the sale or disposition was owned by the taxpayer and was being used for a qualified use by the taxpayer or a member of the taxpayer's family, and

"(B) during the 13-year period ending on the date of the sale or disposition there have been periods aggregating 10 years or more during which—

"(i) such property was owned by the taxpayer and user for a qualified use by the taxpayer or a member of the taxpayer's family, and

"(ii) there was material participation by the taxpayer or a member of the taxpayer's family in the operation of the farm or other trade or business.

"(2) QUALIFIED USE.—The term 'qualified use' has the meaning given such term by section 2032A(b)(2).

"(3) MATERIAL PARTICIPATION.—The term 'material participation' has the meaning given such term by section 469(d)(2), except that a taxpayer shall not be treated as materially participating in the operation of a farm or other trade or business to the extent the taxpayer participates in the operation of the farm or other trade or business though an agent.

"(d) INFLATION ADJUSTMENT.—For purposes of this section, the inflation adjustment with respect to any sale or disposition of any property in any calendar year is the percentage (if any) by which—

"(1) the CPI for the preceding calendar year, exceeds

"(2) the CPI for the calendar year in which the holding period of the taxpayer with respect to such property begins.

For purposes of this subsection, the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of such calendar year."

(b) REDUCTION IN AMOUNT TO WHICH SECTION 2032A APPLIES.—Section 2032A(a) (relating to valuation of certain farm, etc., real property) is amended by adding at the end thereof the following new paragraph:

"(3) REDUCTION FOR BASIS ADJUSTMENT.—The applicable limit under paragraph (2) shall be decreased by the aggregate amount of increases in the decedent's basis in property under section 1060 in connection with the disposition by the decedent of qualified trade or business property (within the meaning of section 1060(c))."

(c) CONFORMING AMENDMENT.—The table of sections for part IV of subchapter O of chapter 1 is amended by striking out the item relating to section 1060 and inserting in lieu thereof the following new items:

"Sec. 1060. Basis of trade or business property sold by individuals age 55 and over.
"Sec. 1061. Cross references."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or dispositions after December 31, 1986, in taxable years ending after such date.

At the end of subtitle D of title VI of the Committee amendment, insert the following:

SEC. . IMPOSITION OF MERGER TAX.

(a) IN GENERAL.—Chapter 36 (relating to certain other excise taxes) is amended by inserting at the end thereof the following new subchapter:

"SUBCHAPTER G—ACQUISITIONS TAX

"Sec. 4499. Imposition of tax.
"Sec. 4499A. Acquisitions to which subchapter applies; controlling interest.
"Sec. 4499B. Definitions and special rules.

"SEC. 4499. IMPOSITION OF TAX.

(a) TAX IMPOSED.—If, during any 18-month period, a controlling interest in any entity (or portion thereof) is acquired in an acquisition to which this subchapter applies, an excise tax is hereby imposed on such acquisition.

(b) RATE OF TAX.—The rate of the tax imposed by subsection (a) shall be 1.1 percent of the value of the consideration furnished by the acquiring entity in connection with the acquisition.

(c) TAX PAID BY ACQUIRING ENTITY.—The tax imposed by subsection (a) shall be paid by the acquiring entity.

"SEC. 4499A. ACQUISITIONS TO WHICH SUBCHAPTER APPLIES; CONTROLLING INTEREST.

"(a) ACQUISITIONS TO WHICH SUBCHAPTER APPLIES."—This subchapter shall apply to any acquisition in which the acquired entity, as of the time of the acquisition, has assets with a value of at least $250,000,000.

"(b) CONTROLLING INTEREST.—For purposes of section 4499, the term 'controlling interest' means the acquisition of—

"(1) at least 50 percent of the voting stock of the acquired entity,

"(2) voting stock of the acquired entity—

"(A) having a value at the time of acquisition of not less than $125,000,000, and

"(B) representing at such time at least 35 percent of the voting stock of the acquired entity, or

"(3) in the case of an acquisition of assets, assets having a value at the time of acquisition of not less than $125,000,000.

In the case of entities other than corporations, rules similar to the rules of paragraphs (1) and (2) shall apply under regulations prescribed by the Secretary.

"SEC. 4499B. DEFINITIONS AND SPECIAL RULES.

"(a) ACQUISITIONS WHERE ACQUIRED ENTITY HAS SUBSTANTIAL NET OPERATING LOSSES.—The tax imposed by this subchapter shall not apply to the acquisition of any entity if such entity incurred—

"(1) a net operating loss (within the meaning of section 172(c)) for the taxable year preceding the taxable year in which the acquisition occurs equal to at least 3 percent of the value of such entity's assets as of the close of such preceding taxable year, or

"(2) an aggregate net operating loss for the 4 taxable years preceding the taxable year in which the acquisition occurs equal to at least 10 percent of the value of such entity's assets as of the close of the taxable year preceding the taxable year in which the acquisition occurs.

For purposes of this section, the net operating losses of any related group of which the acquired entity is a member shall be treated as net operating losses of such entity.

"(b) ENTITY.—For purposes of this subchapter, the term 'entity' includes corporations, partnerships, trusts, and individuals."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 36 is amended by inserting after the item relating to subchapter F the following new item:

"SUBCHAPTER G—ACQUISITIONS TAX"

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

Mr. HARKIN. Mr. President, I offer an amendment which will, if passed, be of great benefit for farmers and small business people. I am pleased that Senator ANDREWS and Senator MELCHER are cosponsoring the amendment.

I would also like to note that the amendment has the support of the Small Business Legislative Council, a coalition of nearly 90 associations who represent a diverse range of industries which primarily represent primarily small businesses. it is also supported by the American Agriculture Movement, the National Association of Wheat Growers, the National Cattleman's Association, National Corn Growers Association, National Farmers Organization, National Milk Producers Federation, and the National Pork Producers Council.

Mr. President, this amendment very simply provides for a once-in-a-lifetime option for the owners of small businesses and farms to sell their farms without being taxed on more than the real gain on the sale.

For many low- and moderate-income Americans the proceeds of the sale of a small business or small farm really represents the bulk of their retirement income. Our Tax Code properly provides for a variety of retirement programs. However, in the real world many farmers and small business people have all their equity wrapped up in their business and farm. That really represents the bulk of their retirement program; that is, when they sell that farm or that small business.

This amendment that I am offering is very similar to the once-in-a-lifetime provision that homeowners have when they can sell their home after age 55 without being taxed on the gain in the value of that home. And like the home loan provision, my amendment provides that the individual selling the farm or the small business must be age 55 or older.

I also provide in my amendment that the owner, the person who is selling the farm or the small business, must have owned and operated that farm or small business for at least 10 years, and I say operated. I mean they have to have been actively engaged in the day-to-day operation of the farm or of that small business for at least 10 years.

The main thrust of the amendment is that it allows an adjustment in the purchase price for inflation. I might also add that we have put a cap on it. We have capped it at $500,000. In other words, the basis will not be adjusted above $500,000 and it would phase out or begin to phase out at $1 million. So beginning at $1 million, it would phase out $1 for each $1, and it would be phased out at $1.5 million.

Basically, here is how the amendment would work. Let us say an individual bought a farm in 1969 for $100,000 and sold that farm this year in 1986 for $500,000. Let us also assume realistically as the case may be here in this example that the Consumer Price Index has gone up 300 percent since 1969. So the basis of that farm at the time of sale this year under my amendment would not be $100,000, but it would be adjusted upward to $300,000 to take into account the increase in inflation over that period of time.

So the farmer who sold that farm would pay taxes not on the $400,000, but would pay taxes on the $200,000 real gain in the value of the property of that farm.

In this example that I have provided the farmer would pay a tax of about $54,000. On the other hand, without this amendment and if we stick with the committee bill with the provision as it is right now, that farmer will be taxed at rate of about $108,000 on the sale of that small farm.

So you can clearly see that this is a very high tax at the very time in life when the farmer or the small business person is getting ready to retire, and is selling that farm or small business to provide for their retirement income.

I would also point out that under the present situation, those individuals who sell a farm or small business can take advantage of the exclusion for capital gains. However, we know that under the committee bill that is done away with.

So the tax rate for this farmer or small business person has effectively been increased from 20 percent to 27 percent. In other words, to be very clear about it, that small farmer or small business person who is selling that property and getting ready to retire under present law would have the capital gains rate, and would pay an effective rate of 20 percent. Under the committee bill, they would pay an effective rate of 27 percent.

So for that individual their taxes are going to go up considerably for them when they get ready to retire. That really is the effect of what is happening in this bill.

Mr. President, this amendment provides for real fairness for a category of people in our society who may on paper have accumulated considerable wealth but it is really only on paper and that paper evaporates very rapidly when they sell that business or small farm and get ready to retire.

I also point out that this is a group of Americans while they seem to have some wealth in a small business the average income they earned on that business or farm really has not been that much over their lifetimes. I am talking about the individual who owns the small grocery store, the dry cleaning establishment, maybe the drug store, maybe it is a shoe repair shop, maybe it is a small clothing store in a small town, or small private entrepreneurs who are out there, mostly family businesses and again who have not made a lot of money. They do not get a lot of income. But they build up equity in their businesses and now they are getting ready to retire. Yet they find when they sell that business they are paying an exorbitant rate of tax not on the real value of that business but, of course, on the inflated value of that business.

There is kind of a funny anomaly here. Under the present bill, if the individual farmer or small business person were to die and leave the farm or small business to his or her heirs, then the heirs do not have to pay any taxes on the increase in the value of that business or property. But if the individual wants to retire and sell that business to retire, then they are taxed on the inflationary gains.

So it is kind of an odd anomaly that we have here where that farmer or small business person, if they die, get a great tax advantage. If they do not die, and they sell it, then they are whacked with taxes. That is sort of an odd kind of a structure it seems to me, that they have to die to take advantage of a kind of nice, little tax situation that is in the Tax Code right now.

I wanted to point that out because I think it is important. It is important because many of these people are getting ready to retire, and their retirement is wrapped up in that small business or that farm. That really is the reality of the situation. We may wish it were otherwise but quite frankly it is not. They find themselves hit with large taxes when they get ready to sell that business.

I might point out another example of how this might work. Let us say an individual bought a business in 1969, again paid $200,000 for it, let us say it is a small dry cleaning establishment. Let us say this family operated this small dry cleaning establishment since 1969. The kids have grown up. They have left home. They went to engineering school. They became computer operators and computer engineers. They have no interest in running the dry cleaning establishment. So the husband and wife sell the dry cleaning establishment to provide for retirement. Let us say they will sell it this year for $500,000. The Consumer Price Index since 1969 has gone up 300 percent. They bought it for $200,000. Under my amendment the adjusted basis then would be $600,000 to take into account the effects of inflation.

But under my amendment, the cap applies at $500,000. The adjustment cannot go over $500,000. The way my amendment is drafted they will not be allowed to take a loss. So there is no kind of a rebate or anything that they can get back. So it is capped at $500,000. So what it means is, in this example, they would pay zero taxes. They would not get anything back. They would pay zero taxes.

Under the committee bill as it is now constituted that same husband and wife, same dry cleaning establishment, same set of circumstances, selling it, getting ready to retire would be hit with a tax bill of $81,000 which is really a heavy hunk of money for an elderly couple who have spent their lifetime building up the small business or farm and now want to retire.

So, again, Mr. President, I think this really provides for a small amount of fairness to a category of people in our society who have not really accumulated a lot of wealth. These are not big people. These are not big megabucks corporations but they are the small businesses that we see in our towns of 5,000, 10,000, 50,000 people, the main street businesses, and also those family farmers, a lot of whom are going out of business right now, a lot of whom are being hit with these big tax bills. They find they are forced out of agriculture for economic reasons. Yet, if they sell their farm now, they are going to get hit with really a tremendous tax bill.

This would provide just a little bit of relief for those small operations. Again, I point out that we limit it only to $500,000.

Mr. President, to pay for this we have looked to a source of revenue which I believe will not be onerous.

□ 1650

It will not hit anybody really hard. And I think it will have a beneficial impact on our society. The Joint Committee on Taxation says we need $2.5 billion to pay for this amendment. So we looked around and asked where we could raise $2.5 billion where it really would not hurt anyone and where we might get some kind of balance and have a residual and good effect on our society.

What my amendment proposes is that an excise tax be placed on mergers and acquisitions where the value of the acquired company is $250 million or more. We are not talking about small mergers. And we are not talking about a big tax. It is not a 20-percent tax. It is not 10 percent. It is not 8 percent. All we are talking about is a 1.1-percent tax to pay for this provision which will allow farmers and small businesses to have some decent retirement when they sell their businesses and not get whacked with a big tax bill.

We are asking that a 1.1-percent excise tax be placed on mergers and acquisitions having a value over $250 million.

Mr. President, we have seen a tremendous growth in these acquisitions in recent years. In 1985, a record $180 billion was spent on mergers, up 47 percent from the previous year. That previous year of 1984 was also a record. Since 1980, the 10 largest acquisitions in history have occurred, and the five largest non-oil acquisitions all occurred in 1985.

In 1985, there were 22 mergers worth over $1 billion. In contrast, in 1980 there was only one such merger.

Mr. President, quite frankly, I am concerned about this, and many in Congress are concerned about it also. This merger phenomenon is having a dramatic impact not only on the financial community but on the American public as a whole.

Although takeovers bring millions of dollars to corporate raiders, millions of dollars to stock speculators, millions of dollars to lawyers and investment bankers, the excesses of takeovers cause substantial injury to the economy by draining corporation resources needed for productive investment. The merger frenzy has put pressure on management to focus only on short-term gains, distracting them from the productive operations of the company, forcing them to ignore the interests of employees, customers, and local communities. Many Fortune 500 companies have incurred substantial debts in order to avoid takeovers. The Federal Reserve estimates that the debt to equity ratio among nonfinancial corporations increased 12 points in 1984 placing many firms in a very precarious financial position.

I would point out that two of the controversial transition rules that were provided by the Finance Committee in this bill gave tax relief to companies that had been very strong but were dramatically weakened by merger activity.

The committee bill provides very generous transition rules to companies which were weakened because of merger activity.

We heard the debate on the Phillips Petroleum Co. It was pointed out that prior to the takeover attempt this company, which I am told is a very good corporate citizen of the State of Oklahoma, had one of the lowest debt-to-equity ratios in the oil industry, about 30 percent.

But in the process of fighting the takeover, that company increased its debt-equity level from 30 percent to 80 percent. I believe that is really damaging.

As a consequence, there will be less money for exploration; more importantly, if the oil industry continues to go through difficult times, this company could go under. Seven thousand employees have already been let go.

So from the national perspective, the Phillips Petroleum Co. shift from a healthy company to one in considerable difficulty, means that banks all over the country may suffer, suppliers may suffer. It means that if we have a serious recession we could see a number of major companies go into bankruptcy.

So, Mr. President, what I am saying is that this amendment providing for a 1.1-percent excise tax on mergers and acquisitions over $250 million is not going to stop all the mergers and acquisitions. It may not have prevented Phillips Petroleum Co.'s takeover bid. But it might just tend to slow it down ever so slightly.

It would have, I think, the effect of making the Tax Code slightly, very slightly, more negative toward mergers than the present code is. Only slightly, I say, because the bill still maintains a number of special provisions that are very beneficial to many giant acquisitions.

Nevertheless, I believe my amendment would represent a very positive improvement to the Tax Code, again by making the Tax Code just slightly more negative toward mergers and acquisitions than it is at the present time.

Given the huge profits that are made upon the initial acquisition of a company, looking at the tens of millions that are often spent to hire those who specialize in these activities, I do not believe that placing a 1.1-percent tax will place any dramatic hold on these companies, but it might create a small disincentive which I think would be very helpful.

My amendment says that we place a 1.1-percent tax on these acquisitions over $250 million and use these funds to allow small business people and farmers who sell their business or farm assets after years and years of active ownership to avoid being taxed just for the inflation that has occurred.

So, Mr. President, we are just talking about a shift in priorities. That is clear. If you are interested in spending capital to buy huge corporate entities rather than using those funds to create a new capacity for family farmers and small businesses, then you would obviously oppose my amendment.

But I hope that those who understand the need to encourage our family farmers or small businesses, who are concerned about the reduced output in performance in corporate America brought on by giant acquisitions and mergers, I hope those individuals will support my amendment.

Mr. President, in summing it up, by supporting this amendment we get two good balances. We help those small business people and farmers actively engaged in their business, about ready to retire, over age 55, who have been actively involved in the business for over 10 years, get a once-in-a-lifetime—just once is all they can use it—to get a small adjustment in their basis so that when they do retire they are not cast to the poorest.

Again, we are only asking for a 1.1-percent excise tax on mergers and acquisitions over $250 million.

So we can strike two good blows here. We can do a lot for those people we always say are the backbone of America, those individuals, those couples, those families who have worked those farms, who have provided for our small business and entrepreneurial spirit in this country. They really are the backbone of this country. So we can strike a blow for them by supporting this amendment. It is small. It is not that big. But believe me, it will do a lot to help a group of Americans who are not really helped very much by this tax bill.

Second, we can strike a blow to try to slow down ever so slightly this mania of mergers and acquisitions that we have going on in this country, to try to say that the Tax Code will be slightly more negative toward those giant mergers and acquisitions.

So, Mr. President, I am hopeful that Senators will support this amendment. As I said, it is nothing big. It does not change any rates. It does not do anything to mess up the Tax Code. But, it sure does a lot for the small business people and small farmers.

Mr. MELCHER addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. MELCHER. Mr. President, I am very pleased and honored to be a cosponsor of this amendment. The principal sponsor is the distinguished Senator from Iowa, Senator HARKIN, who has just spoken in favor of the amendment.

I want to add my endorsement to the comments he has just made. I want to subscribe to those comments and add a few of my own.

□ 1700

There are a number of different retirement programs that individual Americans are able to seek out and employ for their retirement years. Some of us—perhaps, all of us—seek Federal annuity plans, contribute during our employment here, and that is matched by Uncle Sam. Hopefully, it will provide a comfortable retirement for us. For some other working Americans, it is investment during their working years, whether it is in savings accounts or stocks and bonds or various other ways of putting aside money during their working years to be utilized during their retirement.

Now we come to a group such as farmers and ranchers who, during their working years, continually invest in their farm or ranch. Then there are small business people who, during their working years, continually invest in their small businesses.

By doing so, they make the farm more efficient or the ranch more efficient or their small business a better small business and more profitable—at least, that is the hope.

Then, when they reach retirement age, the natural thing in the course of events is to sell the farm or the ranch or the small business and take those proceeds, worked up during their working life and from those proceeds, they hope they will have a comfortable retirement.

That is the American way, Mr. President. It is a good method. Under the laws that exist today, there would be some advantage to the farmer or rancher or to the small business person in terms of the Tax Code, because it has been our policy for a great number of years to allow capital gains on those sales when they are made so the tax bite will not be so big.

Let us review that. We contribute—I am speaking about us, Senators and employees of the Senate and other Federal employees—during our working years into a retirement plan and it is taxed as we earn it. Our contribution is taxed, but nevertheless, it is set aside and it is matched by some money out of the Treasury, so it is available when we retire and start drawing it out.

Other retirement programs are similar, whether they are State or municipal. They are very similar to that. And many private retirement plans are very similar to that.

For farmers and ranchers, it is absolutely essential that we recognize that when they make their money during

the good years and put some investment into improving their place—improving their land or improving their buildings—that investment is to help them two ways: Help them become more efficient during their working lifespan and also to create the capital so that, when they sell out, they will have some opportunity to have adequate funds for their retirement years.

It is the same for small business. They are one and the same.

If we are going to change the tax policy now, as this bill does, and repeal the capital gains, then something ought to be done to address how we make sure that we are treating fairly and equitably farmers and ranchers when they sell out or the small businessmen when they sell their businesses.

So, Mr. President, the Senator from Iowa [Mr. HARKIN] has put together a very sound method of doing so. I fully subscribe to it. I think it is very important and a very significant step in making an adjustment in this bill that is entirely worthwhile.

All across America, we have millions of small business people who should be treated equitably on this matter. All across America, we have farmers and ranchers who need to be treated fairly and equitably on this retirement proposal. This is no more and no less than the same procedure that we have created and which is already in the Tax Code on the sale of one residence per household, per person, during their lifetime in order to get the advantage of holding on to some of the accrued capital through inflation or improvements that have been acquired in a residence.

I think the amendment is eminently fair, I think it is very reasonable and very necessary. I hope that the Senate can agree to it.

Mr. PACKWOOD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. PACKWOOD. Mr. President, I rise in opposition to the amendment and to disagree with the philosophy.

Several months ago, when the Finance Committee was considering—we did not do anything about it, but we were considering eliminating the deduction of excise taxes for large companies, companies that would be involved in mergers, perhaps.

The Senator from Iowa referred to excise taxes as regressive. As a matter of fact, there have been many references recently to excise taxes as regressive by a fair number of Members. Yet he proposes to finance this amendment by an excise tax which, if it is regressive, means that every company that merges—although he set a $250 million threshold. Unfortunately, or perhaps fortunately for America, in today's business world, that is not a large merger. We have seen mergers in the billions of dollars, not just millions.

Second, it presumes ipso facto that mergers are bad. I am not here to pass judgment on whether they are or not. We have had some debate about hostile takeovers, but he is not talking about hostile takeovers; he is talking about friendly mergers between friendly companies and in essence saying, "bad." Not only is this not bad, but we will finance it with what most people have called the most regressive taxes, excise taxes, pass them straight through to the customer.

I hope the Senate will stand in opposition to this amendment. At the appropriate time, I shall move to table it when there is no more discussion.

Mr. BUMPERS. Mr. President, I rise to support the amendment of the Senator from Iowa. I recognize that others can have serious disagreement with it. You might even claim this is micromanagement. But I will never forget when I first came to the Senate, we passed a tax provision that allows homeowners who are over 55 years of age to sell their homes and not pay the full capital gains tax on the home. For many people in that age category, if they have had a home or a farm for 10 years, the value of that home has increased rather dramatically due to inflation over a period of years. That is not so much true of farms anymore. As a matter of fact, farm values have declined over 25 percent in the last 3 years. But it certainly increased in value dramatically prior to this.

□ 1710

With the current provision on home sales we wanted to give those people who were reaching retirement age an opportunity to sell their homes without having to pay an exorbitant capital gains tax on the increased value with the sale proceeds they could turn around and buy a smaller retirement home. A lot of people moved to retirement areas. Some people moved into condominiums. So what we said is if you had owned a home for a certain number of years you can, one time in your life, and only one time, sell your home and not pay the full capital gains tax.

Now, not to have done that would have resulted in a lot of cases similar to the following example. Say a couple in 1950 bought a home for $50,000. They reach retirement age and they want to move away to a retirement village or to a retirement community or to a condominium downtown. Let us assume that that $50,000 home in 1950 has now appreciated in value over a 30-year period of $200,000, a $150,000 paper gain, and under the law, until we provided for the special exclusion, that couple would have had to pay probably $30,000 in capital gains, almost $30,000. And so we said it is not fair for somebody to have a home that has appreciated from $50,000 to $200,000 and then tax them $30,000 so that they cannot even buy anything like as nice a home for their declining years as they have just sold. The special exclusion would reduce this tax to $4,000–$5,000.

I voted "Aye" for that provision because I thought it was compassionate, I thought it was a sensitive concern for the elderly as they reach retirement age. What the Senator from Iowa is trying to do here might not be exactly the same if you just want to use cold logic, but I can tell you one thing, you could not help a group of people who need it more.

In my State, do not act like you want to buy a farm unless you really want to buy it, because you will have a lot of people lining up to sell you their property. I know a U.S. Senator who has a farm that he would just love to get rid of. I am just waiting for somebody to make an offer. Even with that, I promise you I will receive an awful lot less than I could have gotten for that farm 4 or 5 years ago.

But be that as it may, here is a very small advantage and a limited advantage farmers and small businesses. This is not to benefit the big people. Even with land values as they are in my State right now, if you owned anything more than 500 acres, this provision is not going to be applicable to this because this has a $500,000 limitation on it.

This amendment is an opportunity to do something for small farmers and small business, and I personally think that the revenue-raising provision of this amendment is also appropriate.

So we can do two things. We can help small business and we can help farmers who are so desperate for this help. We have thousands of farmers in my State who are desperate to sell their land and get out of the farming business because they find it no longer possible to farm at a profit. But they want to take that money and either use it for retirement, purchase another business, or do something else, and this is an opportunity to help them get out of the farming business as graciously as possible. It will show that we are still concerned about them.

Now, Mr. President, so far as the merger part of this is concerned, I do not mind telling you I do not like huge mergers. I am not saying they are all bad. But I have watched so many mergers that cost billions and billions of dollars and have taken money from banks and other financial institutions to finance, and the merger has no economic or commercial or socially redeeming value to the Nation. It is just the big gobbling up the big and getting bigger. I personally do not think the antitrust laws of this country are

being enforced, but that is a separate subject.

I will say there ought to be some threshold beyond which we will not allow a merger to take place without some penalty, and I think this is a very sensible and suitable way to impose some restraint.

So for all of those reasons, Mr. President, I strongly urge my colleagues to support this amendment.

Mr. President, I see the distinguished chairman of the committee coming on the floor and I do not know whether anybody else wishes to speak. I will either suggest the absence of a quorum or give him an opportunity to move to table the amendment.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I rise in opposition to this amendment. Let me say to my distinguished friend, the Senator from Iowa, that never, either in my previous profession or this profession, have I met a more tenacious fighter than he, and in this case a more tenacious fighter than the family farmer. And it is because I recognize that that I made sure as we deliberated this tax reform bill I consulted with him, and I want to thank him for his contributions to this bill because I think they are significant and I think the result is a tax reform bill that helps the family farm.

Mr. President, we have to realize the tax reform bill before us is of great benefit to the family farmer. With the help of the Senator from Iowa, I became aware of an agricultural tax reform committee that was formed in 1985, a group of grassroots, broad-based individuals organized to study agriculture tax shelters, and there was a group of Iowa, farm organizations, commodity groups, rural communities, environmental organizations. They studied the issue for a year, had a conference and at the end of that conference one of the participants, Dr. Harold Breimeir of the University of Missouri, summarized the seminar by saying:

> There is no chance of preserving family farming if tax rules are not changed. There is no point in even trying unless the tax matter is addressed and corrected.

Frankly, it is because of the work of groups such as this that I think we have produced a tax reform bill that eliminates the bulk of those tax shelters, the bulk of those tax shelters which have led to overproduction and to falling commodity prices. I think it is because we have taken these actions that another agricultural group, the Center For Rural Affairs in Walthill, NE, issued a report called "The Impact Of The Finance Committee Tax Bill On Family Farming And A Comparison With The House Bill To Current Law." And this group said:

The Senate Finance Committee tax bill would improve farm profits and enhance the long-term viability of family farming by eliminating farm tax shelters.

I ask unanimous consent that their full report be printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

IMPACT OF THE FINANCE COMMITTEE TAX BILL ON FAMILY FARMING AND A COMPARISON WITH THE HOUSE BILL AND CURRENT LAW

The Senate Finance Committee tax bill would improve farm profits and enhance the long term viability of family farming by eliminating farm tax shelters. Agriculture is a tax shelter industry. It offers investments through which taxpayers can understate income or create losses for tax purposes, where real economic losses do not exist. This attracts investment dollars to agriculture-dollars which increase production, add to surpluses and lower prices paid to farmers. It also changes the rules of competition. It is not enough to be efficient to compete in agriculture today. One must be able to competitively exploit the tax code. That grants an advantage to large operations, corporate farms and investors with the capital and high bracket incomes to most effectively farm using the tax code. Moderate sized family farmers and beginning farmers are placed at an unfair competitive disadvantage. Finally, the tax code induces individual family farmers to make decisions that collectively reduce opportunity for people in agriculture. When farmers make money, the tax code tells them to take on more debt to expand. The results are higher farm failure rates in the bust years, overproduction, and fewer opportunities for young people to enter agriculture as land and markets are absorbed by expanding farms.

SUBSIDIES TO CAPITAL—INVESTMENT CREDIT AND ACCELERATED DEPRECIATION

Current Law—Ten percent investment credit; farm equipment, grain bins and single purpose agricultural structures (confinement and dairy buildings) are depreciated over five years, 150 percent declining balance. Up to $5,000 of depreciable property can be expensed (immediately deducted).

Finance Committee Bill—Eliminate investment credit; $10,000 expensing; depreciate farm equipment and grain bins over five years, 200 percent declining balance (200 percent declining balance would make more of the writeoff available in the first three years). Single purpose agriculture structures would be depreciated over 10 years, 200 percent declining balance.

House Bill—Eliminate investment credit; $10,000 expensing; depreciate farm equipment over ten years, 200 percent declining balance.

Recommendation and Rationale—Either bill is an improvement over current law, though we prefer the House provision because the depreciation schedules are more reflective of useful life. Reducing subsidies to replace farmers (labor) with capital would slow the growth in farm size and the resulting reduction in the number of farms and loss of opportunity for beginning farmers. Eliminating investment credit and lengthening depreciation on single purpose agricultural structures would reduce investment and increase long term profitability of meat and milk production. Research by Oklahoma State University Economist Luther Tweeton indicates that hog producers would receive more after tax income over a five year period if these provisions were eliminated. Investment credit and rapid depreciation of structures also contribute to dairy surpluses by subsidizing the establishment of new dairies by as much as $350 per cow capacity. Reducing these tax incentives would strengthen the competitive position of family farmers because the breaks are worth most to large operations owned by high bracket taxpayers. The benefit to a high bracket investor is two and one half to five times greater per hog than to typical family farmers.

CAPITAL GAINS

Current Law—Individual capital gains are 60 percent tax exempt. Corporate capital gains are taxed at 28 percent. The entire sale price of raised breeding and dairy stock is capital gain.

Finance Committee—Tax individual capital gains as ordinary income (27 percent top rate) and corporate capital gains at 28 percent, versus the 33 percent top rate. The entire sale price of raised corporate breeding and dairy stock sales would be capital gain, if the corporation is eligible to use cash accounting.

House Bill—Individual capital gains would be 42 percent tax exempt. Corporate capital gains would be taxed at 28 percent. Only a portion of the sale price of breeding and dairy stock would be capital gain. An amount equal to the deductable costs of raising such stock would be ordinary income.

Recommendation and Rationale—Either bill would be an improvement over current law, though neither is perfect. The most accurate measure of income would be to adjust the asset's purchase price for inflation to compute capital gain and then tax the gain as ordinary income. However, if capital gains are indexed, a higher tax rate should be created for high income people. Otherwise, it would increase the deficit and/or shift tax burdens off of the wealthy who receive most capital gains and on to moderate income taxpayers. If gains are not indexed, steps should be taken to protect low income taxpayers who might be taxed on nominal capital gains where no real gains exist (real gain is appreciation beyond the general rate of inflation). For example, real land prices have fallen to their levels of over a decade ago in many areas. Financially strapped farmers who sell such land to meet debt obligations could be hit with a big tax bill on nominal gains, even though they have negative incomes and received no real gain.

Nonetheless, changing current law is necessary. The tax favored treatment of capital gain grants a competitive advantage in the land market to high bracket taxpayers over family sized farmers. The capital gains exemption encourages land speculation by largely exempting speculative profits from taxation. This worsens the boom bust cycle in the land market. In the boom years speculative buying pushes the price of land beyond its income producing potential. Then, only those who need not pay for land by farming it can afford it. According to the USDA report "Effects of Tax Policy on American Agriculture," rapidly appreciating land worth $2,200 per acre to a 16 percent bracket farmer is worth $3,200 dollars to a 50 percent bracket taxpayer (almost 50 percent more) because of the capital gains exemption. However, when times turn bad and appreciation slows, tax induced investment flees the farmland market, busting land prices and the collateral of family

farmers and ranchers. The same 50 percent bracket taxpayer could justify a bid of only $2,000 per acre if appreciation slowed to four percent, according to USDA.

Would eliminating the capital gains exemption now further depress land prices? Not necessarily, because the tax motivated speculative buyers are largely out of the market. A tax break on capital gains does nothing to support land prices unless land offers capital gains or at least the expectation of capital gains. Today land is yielding capital losses. Eliminating the favored treatment of capital gains would reduce the potential for reinflating land prices once the farm economy strengthens. But at that point the damage of falling land prices will have been done. Tax driven reinflation would only make it harder to pay for land by farming it and increase the severity of the next boom/bust cycle.

Capital gains treatment of raised breeding stock should be eliminated. Current law turns every breeding and dairy animal into a potential tax shelter by allowing deduction of 100 percent of the cost of production, but taxing only 40 percent of the sale price. The result is over production and a competitive advantage to high bracket taxpayers. A 20 percent bracket calf producer would be better off without the capital gains exemption if its elimination resulted in a $2.50 per hundred pounds increase in the price of feeder calves. However, a 50 percent bracket investor would need a $10 price increase. For a 20 percent bracket milk producer, the needed price increase is 19 cents per hundred pounds of milk versus 77 cents for 50 percent bracket taxpayers. For hog producers, the needed price increases are 48 cents and $1.98.

TAX EXEMPT BONDS

Current Law—Tax exempt financing of farmland is allowed only for first time farmers—farmers who have never owned more than 15 percent of the median land holdings within their county or land worth more than $125,000. Land loans are limited to $250,000. Used equipment and breeding/dairy stock cannot be financed with tax exempt bonds except that a de minimis amount may be purchased in conjunction with land. Depreciable property loans are limited to $40 million per borrower. The tax exemption on industrial development bonds would end this year.

Finance Committee Bill—Farmers would be allowed to own up to 30 percent of median land holdings and still receive land loans. Farmers who previously owned more than 30 percent, but lost it in an insolvency proceeding would be eligible. Farm depreciable property loans would be limited to $250,00 per borrower. Up to $62,500 of used depreciable property could be financed by first time farmers independent of land purchases. Agricultural bonds would be terminated at the end of 1988.

House Bill—Same as current law except that the termination date would be extended to 1988 and banks would not be able to deduct interest paid on deposits used to purchase tax exempt bonds.

Recommendations and Rationale—Tax exempt bonds are not a good way to finance government programs, but if they are used they should help non-wealthy people get into agriculture. The Senate provision to allow farmers who lost their land to receive financing to start over would be a positive step in that direction. However, the provision must be drafted to ensure that it works for insolvent farmers who sold their land or turned it back to the lender, rather than losing it in foreclosure. The language should state that farmers would not be determined ineligible under the first time farmer test by virtue of land formerly held and lost or sold while the farmer was insolvent or had debts in excess of 70 percent of assets.

The Finance Committee took a very positive step by allowing first time farmers to finance used equipment with tax exempt bonds. Most beginning farmers can't afford new equipment. The Finance Committee also took steps to more effectively target tax exempt bonds by capping the amount of farm depreciable property that could be financed with tax exempt bonds at $25,000 per borrower. That will prevent multimillion dollar loans to large corporate hog and dairy operations. That could be improved by requiring that applicants personally operate the farm and own land worth no more than the national median value of land and buildings per farm. Furthermore, the first time farmer rule should be tightened to disqualify applicants who seek low interest loans to buy land to add to large family landholdings. Currently, such applicants are personally eligible if the family land is not in their name, as in the case of many young family members. Rather than enhancing opportunity in agriculture, that reduces opportunity by subsidizing the concentration of land in large holdings of wealthy families.

Also in need of change is the House provision denying bank deductions for interests on deposits used to purchase tax exempt bonds. That would effectively deny tax exempt finance to small farmers. Small loans do not justify the costs of advertising a bond issue on Wall Street. Several states have gotten around this problem by allowing a bank seeking low interest funds for a small farmer to itself purchase the tax exempt bond to finance the farmer. This means to make tax exempt bonds work for small farmers would end if banks could not deduct the interest. An exception should be created in the House Bill for loans to first time farmers.

LIMITS ON CASH ACCOUNTING

Current Law—Farm syndicates (investors not involved in management) deduct inputs when consumed, rather than when purchased.

House Bill—Syndicates deduct inputs when consumed and capitalize costs of raising orchards, breeding/dairy cattle and horses. Nonsyndicates could elect to deduct such costs but those who do would use straightline depreciation on farm assets and development costs would be recaptured as ordinary income upon sale. Assets with a preproductive period of less than two years, such as sheep and hogs, would be treated as under current law.

Finance Committee—Same as current law, except that no more than 50% of total farm deductions, including interest and depreciation, could consist of unconsumed supplies such as feed, seed and fertilizer purchased for use in future years.

Recommendations and Rationale—Neither bill effectively addresses the impact of cash accounting in stimulating farm size growth and overproduction. The Finance Committee Bill limitation on deductions for future years' inputs is a sound concept. However, the limit is too high to affect more than a few cases. It would require tax shelter cattle feeders to place cattle on feed early enough in the year to consume half of the feed by year's end. Cash accounting is an issue for future tax bills.

PASSIVE LOSS LIMITS

Current Law—No restriction.

House Bill—No restriction but some passive losses in excess of investment would be considered tax preferences for the minimum tax.

Senate Bill—Losses from investments in which the taxpayer does not materially participate in management could not be deducted from other sources of income, with the exception of passive losses from oil and gas investments. The limits on deduction of losses from rental property are more restrictive. Even if the landlord materially participates in management, he/she could deduct losses of no more than $25,000. If the landlord's income exceeds $150,000, no rental losses could be deducted even with material participation. No losses could be deducted by any landlord who does not materially participate.

Recommendations and Rationale—The Finance Committee provisions should be adopted. The House minimum tax provisions could be easily avoided by many tax shelter investers. The Finance Committee provisions would get the uninvolved tax shelter investor out of agriculture, such as the New York stock broker feeding cattle he/she has never seen. Though this is a good provision, it would not by itself solve the whole problem. Nonfarmers who oversee and manage their farm operations need not labor on the farm to deduct the losses. Without other reforms, the tax code would still encourage over production, corporate farming and bigger and fewer farms.

TAX RATES

Current Law—For a farm family with three children, income of up to $8,870 is untaxed. Income from there to $11,130 is taxed at the 11 percent rate, income up to $13,400 at 12 percent, income up to $18,040 at 14 percent, income up to $22,460 at 16 percent, income up to $27,000 at 18 percent, income up to $31,740 at 22 percent, income up to $37,460 at 25 percent and income up to $43,120 at 28 percent.

House Bill—For a family with three children, income up to $14,800 would be untaxed. Income from there to $37,400 would be taxed at 15 percent.

Finance Committee Bill—For a family with three children, income up to $15,000 would be untaxed. Income up to $44,000 would be taxed at 15 percent.

Recommendations and Rationale—Comprehensive tax reform does not necessarily offer farmers tax relief. However, it does offer the opportunity to get rid of the negative impacts of tax shelters without necessarily increasing farm tax burdens. Tax reform is good for family farming.

OTHER PROVISIONS.

Income Averaging—Both bills would eliminate income averaging. That would penalize farmers with volatile incomes. Under the Finance Committee Bill, a farm family of five with an income alternating between 0 and $40,000 per year would pay 2½ times the tax as a family of five earning $20,000 each year. income averaging should be retained for taxpayers with volatile incomes. The revenue loss could be substantially reduced by preventing its use by taxpayers with steadily rising incomes.

Land Clearing and Conservation—Both bills would eliminate deductions for land clearing and deny the conservation deduction unless the expense is part of a soil conservation plan approved by the U.S. Soil Conservation Service. Current law allows deduction of any earth moving expense as a conservation deduction. The tax break has been claimed for costs of developing highly

erodible land for cultivation. In addition, both bills would deny the capital gains exemption on sales of wetlands and highly erodible land converted to cultivation after the effective date of the Act. These provisions would discourage development of new cropland and thereby reduce long term surpluses, soil erosion and destruction of wildlife habitat.

Health Insurance—The Finance Committee Bill would allow farmers to deduct half of their health insurance premiums, which would provide equity with employees who receive health insurance as a tax exempt fringe benefit.

Insolvent Farmers—The Senate Bill would allow farmers with debts in excess of 70 percent of assets to be considered insolvent and therefore exempt from taxation of loan writedowns.

Corporate Tax Rates—Both bills would continue the graduated corporate tax rates which allow large farmers and investors to avoid the progressivity of the tax code by splitting income between the low personal bracket and the low corporate bracket. Once incorporated, large farms must reinvest earnings in expansion to avoid double taxation. This breeds concentration and reduces opportunity for beginning farmers. This is an issue for future tax bills.

FUN AND GAMES WITH CHICKEN FEED

(By Ruth Simon)

Most reasonable observers would not call Hudson Foods a family farm. Based in Rogers, Ark., Hudson is now the country's 17th-largest poultry producer. In the fiscal year that ended last Sept. 28, Hudson earned $8.5 million or sales of $185 million. It went public in February, raising $21.3 million.

Your basic family farm? The Internal Revenue Service, not always a reasonable observer, thinks so. As a result, Hudson was able to defer $7.6 million, its entire federal tax bill, last year under long-standing IRS rules. This deferral can be rolled over more or less indefinitely.

Hudson is not a fluke. Other agri-industrial complexes, including $1.1 billion (sales) Tyson Foods and privately held Perdue Farms (estimated sales, $740 million) also routinely receive tax breaks originally intended for family farms. How? By qualifying under some rather arcane rules that allow "family farms" to use cash accounting instead of the accrual accounting the IRS requires most companies to use when computing taxable income. The rules date from 1919 when the Treasury concluded farmers weren't sophisticated enough to use accrual accounting and said they could use cash accounting instead. Big farmers didn't abuse the provision, because taxes were low. Besides, there weren't many big farms.

The choice of cash or accrual is especially important for livestock farmers because such production costs as feed are incurred well before the livestock is sold.

Consider a chicken farmer. Accrual accounting would require him to report a portion of his feed inventories at the end of each year, while not permitting him to expense the feed until the bird was actually sold. The theory is that the feed is an integral part of the cost of producing the bird. Accrual accounting says income and expenses should be matched, so feed costs should not be deducted until revenue is received.

Cash accounting, in contrast, allows the farmer to report cash expenses and receipts when they actually occur. That means the farmer can immediately deduct the feed as an expense, but he doesn't have to report the chickens as income until they are sold. Expensing in the current period while deferring income to a later period amounts to a tax-free loan to the farmer from the Treasury. The bigger and more profitable the farm, the larger that tax-free loan tends to be.

In 1976 the Treasury argued that agribusinessmen were equipped for the rigors of accrual accounting. Treasury tried to limit cash accounting to farmers grossing less than $1 million annually. That sent the big livestock producers squawking to their congressmen, who chickened out. Even a farm grossing $1 billion or more could be a "family farm," Congress said, if at least 50 percent of its stock was controlled by a single family. It also carved out exceptions for individuals, partnerships and Subchapter S corporations and for farm corporations controlled by two or three families.

Hudson Foods Chairman James Hudson played those loopholes with the skill of Stephane Grapelli on jazz violin. Hudson, a former Ralston Purina executive, and two other investors bought the business from Ralston Purina in 1972. Hudson bought out his co-investors in 1984, and took the farm public in February.

But note the key: Hudson Foods has 12 million shares outstanding. James Hudson owns outright 7 million of those shares, 58 percent, and has the right under a revocable proxy to vote an additional 3 million shares owned by his family and company executives. With Hudson effectively controlling 10 million shares—83 percent of the common—Hudson Farms can do several more public offerings and still qualify as a "family farm."

Hudson cheerfully agrees "it's been a long, long time" since he drove a tractor. But, he says, "Farming, as defined in the tax code, is the production of farm products. It doesn't matter whether you ride a tractor or a horse." In other words, says Hudson, all farmers are created equal and should be treated equally by the IRS.

Springdale, Ark.-based Tyson Foods, the nation's second-largest poultry producer (after ConAgra), is also proving adept at playing by the family farm rules. This $1.1 billion agricompany contracts out chicken production to thousands of small farmers, and it derives more than 60 percent of its revenues from such "further processed products" as Chicken McNuggets and frozen dinners.

To remain a family farm—but also raise public equity—Tyson recently reincorporated in Delaware, where it can issue two classes of stock. The Tyson family will trade its 55 percent Class A holding for restricted Class B shares that carry ten votes each. Outside shareholders can keep the Class A shares or swap them for Class B, which pays a lower dividend. If only the Tysons make the switch, they will control 92 percent of the voting rights—far above the magic 50 percent minimum. Any new stock issued by Tyson will be of the Class A variety.

Important? It is to Tyson. Tyson earned $35 million in the fiscal year that ended Sept. 28. Cash accounting allowed it to defer about $26 million in taxes. That amounted to 78 percent of Tyson's 1968 federal tax bill.

"We consider ourselves as an umbrella over about 6,000 farms and farm families," says Chairman Don Tyson, defending his use of the family farming rules. "If we didn't have this kind of situation, we couldn't protect those 6,000 farmers."

But do family farmers need such protection? The fact is, cash accounting often works against farmers by making cattle, hogs and certain orchards attractive tax shelters and by encouraging overproduction. "I've seen too many instances where egg producers or others on a cash basis will expand their operation to avoid paying income tax," says Agriculture Secretary Richard Lyng, who was briefly on Hudson Foods' board. "That kind of tax policy has caused family farmers a lot of trouble."

Chuck Hassebrook of the Center for Rural Affairs in Walthill, Neb. agrees. "Cash accounting," he warns, "really distorts supply and demand." And Tyson may soon freeze the amount it defers because tax factors are warping its business decisions.

This seems like just the kind of loophole genuine tax reform should plug. Indeed, the Administration's reform proposals would have limited cash accounting to companies with less than $5 million in gross receipts. But the big farmers and their lobbyists squawked as in 1976, and congressmen again clucked. Reforming farmers' cash accounting was one of the first proposals to be dropped last year by congressional tax writers.

Mr. BRADLEY. So the bill before us is good for the family farm, and I thank the Senator from Iowa for his contributions in helping us make sure it was good for the family farm.

Mr. HARKIN. Will the distinguished Senator yield on that point?

Mr. BRADLEY. I yield for a question.

Mr. HARKIN. I thank my friend from New Jersey for his very kind remarks on my behalf. With the exception of those remarks, I do not want to agree with everything that the distinguished Senator just said.

□ 1720

First of all, I want to compliment the Senator from New Jersey, as I said the other day, not just for this tax bill but for the years of working in the vineyards to get the kind of support we need to get this kind of tax reform bill through Congress.

Surely, there is no individual in the United States who has devoted more time, effort, and intellectual energy to this endeavor than has the Senator from New Jersey. I think this is the fruit of his many years of laboring in the vineyards to get this kind of bill on the Senate floor.

When the Senator from New Jersey first approached me several weeks ago, when the bill was coming out of the committee, I must say that I was at first a little apprehensive. I was a little skeptical that any tax bill coming out of the Finance Committee would really help family farmers. This is my 11th year in Congress, and I have not seen one tax bill yet that came through that really helped what we consider to be family farmers and that would really help to put agriculture on an even keel and would not give people incentive to invest in certain areas.

I have to admit that when the Senator from New Jersey first approached me, I was a little skeptical, and I think he detected that. But I took the information he had, went through it with my staff, we contacted both groups he mentioned, at the University of Missouri and the Center for Rural Affairs in Nebraska, and, by gosh, he is right—this is a good bill for family farmers. I will go further than that: It is a very good bill to get agriculture back on the kind of even keel we want. That is why I will support this bill and why I was proud to sign the letter with the Senator from New Jersey saying that this bill is in the best interests of the family farmers. That is not to say, however, that a slight modification might not also help a little more.

I understand the Senator's position. I appreciate his yielding.

I just want to make one other point, if the Senator will allow me, and that is on the excise tax issue, on the mergers and acquisitions.

I have made the statement before that excise taxes are regressive, and generally broad-based excise taxes are regressive, but they do not need to be.

This tax is very narrowly defined. It is not a broad-based excise tax. It probably would not hit more than 100 or 150 transactions a year. As a matter of fact, it is probably less than they pay the lawyers to get involved in these mergers and acquisitions, and is easily administered. So, it is not a broad-based excise tax that is regressive. If you had a luxury tax, I do not think that would have to be regressive, and I do not think this excise tax is regressive, because it is narrowly defined.

Again, as the distinguished chairman of the committee said, not all mergers are bad. Well, perhaps not all mergers are bad, but there are a lot of things we tax that are not bad. I am not saying that we are taxing something that is bad We are taxing an activity which usually provides a windfall to a lot of people to provide a little retirement income for a person selling his small business or farm.

I thank the Senator from New Jersey.

Mr. BRADLEY. Let me say, in response to the kind remarks of the Senator from Iowa, that I can appreciate his help in making sure that this is a good bill for family farms.

In the last sentence of the letter from the Tax Committee in Iowa, they say this, and its says it all:

> In our opinion, the action of the Senate Finance Committee in regard to tax policy is keyed to a healthy rural economy and will detemine whether our sons and daughters will get the farm.

So I think that says it all about this bill and what it means for the family farm.

I know that the Senator from Iowa says: "Couldn't we have just a little bit more, even though it is the best bill in a generation for the family farm?"

I say to the Senator from Iowa that I think he has gotten a little bit more. We have income averaging, which is one of the things he is interested in. We have a special provision on debt forgiveness for family farms, which I think is something of interest to him. We retained some cash accounting, which is not as relevant but is somewhat relevant.

So I hope he will withdraw the amendment. The concern is that once you have adjusted the basis for farms, I know what is going to happen. There is going to be another amendment come along to adjust the basis for stocks, another amendment to adjust the basis for other capital assets.

So I am afraid that I will have to say that I hope we will reject the Senator's amendment, because I think this would be the beginning of a number of amendments that would attempt to adjust the basis. While I would like to do everything I could to help the family farm, I think that in this bill the family farmer has done very well.

So I urge that we reject the amendment of the Senator from Iowa.

Mr. PACKWOOD. Mr. President, I move to lay the amendment on the table, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing on the motion to table the amendment of the Senator from Iowa. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBERGER], the Senator from Arizona [Mr. GOLDWATER], the Senator from Idaho [Mr. MCCLURE], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Mississippi [Mr. STENNIS], is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 60, nays 35, as follows:

[Rollcall Vote No. 142 Leg.]

YEAS—60

Armstrong	Dole	Hawkins
Baucus	Domenici	Hecht
Biden	Eagleton	Heinz
Bingaman	East	Helms
Boschwitz	Evans	Humphrey
Bradley	Garn	Kassebaum
Chafee	Glenn	Kennedy
Cochran	Gore	Kerry
D'Amato	Gorton	Lautenberg
Danforth	Gramm	Laxalt
DeConcini	Hart	Lugar
Denton	Hatch	Mathias
Dodd	Hatfield	Matsunaga
Mattingly	Quayle	Stevens
McConnell	Rockefeller	Thurmond
Moynihan	Roth	Trible
Murkowski	Rudman	Wallop
Packwood	Simpson	Warner
Pell	Specter	Weicker
Proxmire	Stafford	Wilson

NAYS—35

Abdnor	Ford	Metzenbaum
Andrews	Grassley	Mitchell
Bentsen	Harkin	Nickles
Boren	Heflin	Nunn
Bumpers	Hollings	Pressler
Burdick	Inouye	Pryor
Byrd	Johnston	Riegle
Chiles	Kasten	Sarbanes
Cohen	Leahy	Sasser
Cranston	Levin	Simon
Dixon	Long	Zorinsky
Exon	Melcher	

NOT VOTING—5

Durenberger	McClure	Symms
Goldwater	Stennis	

So the motion to lay on the table amendment No. 2112 was agreed to.

□ 1750

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion to table was agreed to.

Mr. MOYNIHAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I will take just a second.

Mr. President, I am advised by the distinguished chairman of the committee, Senator PACKWOOD, that we are making real progress on the bill. We have made an effort on this side, which has been a successful effort, to go back to each of our colleagues and suggest—unless it is some really important, important, important amendment—that we forego it, particularly if it is something we can deal with in the conference. I am advised by the chairman that we are down to what?

Mr. PACKWOOD. Nine amendments. On all of the transitional amendments on this side, the Members indicated they would give us a list to take to conference and not take them up here. We are within shooting distance of finishing.

Mr. BYRD. Will the distinguished majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. Mr. President, we on this side have certainly been trying to cooperate with the distinguished majority leader in determining what amendments remain, and whether or not time limitations can be gotten on amendments. We have urged our Senators to call them up, and we have been successful in doing that.

I believe the time has come when the Senate ought to know what the program is going to be for tonight, whether or not we are going to be acting on this measure tomorrow, and whether or not we can possibly agree to a time limitation.

I would like to agree to a time for the final vote. Let it be Monday, Tues-

day, or whatever. But I believe we should try to get a time limitation.

The distinguished chairman says they are down to nine amendments on his side. I do not dispute the chairman's word. I would like to see that on paper. I would like to identify the amendments, and let us see how many amendments we have. Let us see if we can arrive at a time limitation for a final vote, setting a definite time on a definite date, with no more amendments to be called up other than those that may be listed or filed at a particular time.

We were up until 1 o'clock last night, we were up until 1 o'clock the night before, and I do not know whether we are going to be able to go to 1 o'clock tonight.

I feel that there is an inclination on my side of the aisle to come to some agreement as to a final day and time for a vote. We cannot do that until we know how many amendments really remain and what those amendments are. My colleagues on this side seem to be very agreeable to trying to reach a time agreement limitation on their amendments.

As a matter of fact, last night when we laid everything in the RECORD, most of the Senators on this side were not only willing to identify their amendments but also were willing to agree to a time limit. Many of them were exceedingly liberal, it seems to me, in reducing their time.

So I would respectfully say to the distinguished majority leader, if we can get together in the next 10 or 15 minutes to see if it is possible Senators will know what we are going to do tonight.

Some of our colleagues on both sides of the aisle do not want rollcall votes this evening. Some on both sides of the aisle do not want rollcall votes tomorrow. But I know the distinguished majority leader has a responsibility to press this legislation. We all have that responsibility.

Let us see if we can get together, and determine a time and day. It seems to me that the Senate will pass this bill, whether it is tomorrow, or whether it is Monday or Tuesday and pass it—as I said early on, maybe I was a little overenthusiastic and too optimistic in saying I would expect we would vote 100 to nothing for it. I am not sure I would bet on that today. But I am sure the Senate is going to give this bill in the final analysis a whopping vote.

If Senators have an opportunity to call up their amendments, I hope they will respond to the opportunity. It seems to me that if we can agree to this, get the bill out, get a good vote on it, the chairman and the ranking manager will have accomplished their goal, the majority leader and I and all Senators will have accomplished ours in getting the bill passed, but we do need to sit down this evening and work this out. Perhaps we can do it right here on the floor, but we need to find out what the remaining amendments are.

Let us see if there are nine amendments. Let us see how many there are on this side, and see when we might bring this whole thing to a close.

I thank the majority leader.

Mr. DOLE. Mr. President, I thank the minority leader. I will have staff put together a list of the amendments that remain on this side. That will not take over 15 or 20 minutes. I know there are Members who have to leave. In fact, we have had a couple of Members who had to leave and will miss votes.

I know Members have engagements. This Senator had a plane at the airport to take me to New York until about a half hour ago, and I said forget it. I was advised by the chairman that we are going to work tonight and tomorrow.

So what we might do is compile an updated list, get our staff and the minority staff to do that right now, come back to the floor in 15 minutes, 20 minutes, identify the amendments, and maybe at that time it would be in the spirit of generosity to move some Members to take theirs off the list.

Then if we get down to a manageable number—when we had 90 amendments if did not seem to make any sense to try to get an agreement. But we have one now that is going to be disposed of in 5 minutes.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. DOLE. I will yield.

Mr. BYRD. I feel that there is a tendency on this side, and a willingness to say what amendments there are right now. There are some Senators who have amendments, but who may not call them up, and who may be willing to settle for a colloquy.

It is 6 o'clock, and at least on my side of the aisle, if the majority leader will try to see what Senators still have amendments, we have 23 listed there. But some of them are probably not going to be called up. I cannot presume to speak for any Senator. But if the majority leader will agree, at least I would like to try to see what Senators on this side have to say.

Mr. DOLE. I am happy to do that right now.

Mr. BYRD. Yes.

Mr. EXON. Mr. President, will the majority leader yield for a question?

Mr. DOLE. I am happy to yield for a question while I am obtaining a list of the amendments.

Mr. EXON. Can the majority leader advise me or bring me up to date on what is the situation with regard to the supplemental appropriations? I understand the conference has ended. As we know, that resolution is important to many of us, particularly in the agricultural States because of what is paid out for the deficiency payments. The court systems to some extent are handicapped at this time.

Is it correct that matter has to go back to the House of Representatives first? Is there any chance that we could act on that? I would presume that if the House has to act first, I am asking has he been in contact with the House, are they going to be able to pass that before they go out so that we might be able to act on that before we adjourn for the weekend if and when we do? If so, does the majority leader have any direct information from the White House as to whether or not the President is going to carry out his threat to veto the bill primarily because of the amendments that we passed with regard to the REA.

Mr. DOLE. Let me respond. The Senator is right. It is very important to all of our States, particularly the farm States.

The PRESIDING OFFICER (Mr. TRIBLE). Will the majority leader suspend? The Senate is not in order. Those staff members on the Republican side that are standing will either take their seats or leave the Chamber at once.

□ 1800

Mr. DOLE. The Senator is correct, that it is a very important supplemental. I am advised the House will not act until the first of the week. We will not get it until Tuesday or Wednesday.

I cannot respond as far as whether or not the bill will be vetoed. I have been trying to reach a certain person at the White House to see if I can get a reading on that. I am unable to do that. I share the views the Senator has just expressed, that the payments are not being made. It is going to be not only an inconvenience but in some cases real distress for farmers throughout the country. And others, I might add.

Mr. EXON. I thank the majority leader. I appreciate very much the fact that he does agree. I assume that means if and when the House gets around to passing this measure, it will receive top priority in its consideration here.

Mr. DOLE. That is another reason we want to dispose of the tax bill, so we do not have to worry about two big bills, which one will have priority. If we can dispose of this tonight or tomorrow we do not have to worry about what is coming up next week.

Mr. EXON. If we do not complete this, will the distinguished majority leader set this aside and take up the supplemental as a higher priority?

Mr. DOLE. That would be my present intent, unless we got close to passing this bill.

Mr. President, I would like the distinguished minority leader to ask the Members on his side what amend-

ments there are, if he is willing to do that, to run a check on his side. I will be prepared to do the same on this side.

Mr. RIEGLE. Will the majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. RIEGLE. My amendment will take only 5 minutes. I will be happy to offer it now while this is going on or defer to the will of the majority leader.

Mr. DOLE. A 5-minute time agreement?

Mr. RIEGLE. Yes.

Mr. DOLE. The Senator can have it all.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. RIEGLE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

Mr. BYRD. Mr. President, I want to respond to the distinguished majority leader. Will the Senator yield?

Mr. RIEGLE. I will yield, of course.

Mr. BYRD. Mr. President, I commend the Chair in maintaining order.

Mr. President, first let me say I think Senators need to know what is going to happen on the transition rules and also there will certainly be a reluctance to agree on the terms, unless we know precisely what the amendments are on the other side. There is an amendment or so floating around that would probably make it extremely difficult to complete action on this measure tomorrow or Monday or Tuesday or Wednesday or Thursday or Friday of next week.

Mr. PACKWOOD. Will the Senator yield?

Mr. BYRD. Yes.

Mr. PACKWOOD. Would it be possible to get a unanimous-consent agreement that only those amendments that will be filed at the desk by 9 o'clock tonight will be considered? At least then we will know what is potentially going to be offered. I am fully aware of some amendments that will be at that desk that will not be offered. I am not asking at this stage for a unanimous-consent agreement on time. But that takes care of 80 percent of the amendments, that people are not going to offer them.

Mr. BYRD. Mr. President, that will not resolve this problem. If that amendment is filed at the desk, there will not be any inclination to move forward on some of these others. I think we ought to know whether or not that amendment is going to be filed, and whether or not there is going to be action on it.

If this will help, the following amendments are listed, may I say to the distinguished majority leader and to the chairman of the committee, and are by the following Senators.

First, I am stating these as amendments which can probably be worked out and may not take much time:

An amendment by Mr. MOYNIHAN relating to the foreign area section 902/213; an amendment by Mr. PRYOR, who is here on the floor, modify installment sales, land.

If I am misstating with respect to any Senator's intentions, I am sure that such Senator will speak now.

An amendment by Mr. LEAHY, satellite investment tax credit; an amendment by Mr. DECONCINI, installment sales; an amendment by Mr. DECONCINI, Technology Transfer Corporation; an amendment by Mr. SASSER, apply Regulatory Flexibility Act to both interpretive and legislative rules of IRS; an amendment by Mr. MATSUNAGA, tax treatment, medical malpractice. That has been listed for 10 minutes.

An amendment by Mr. MATSUNAGA, to exclude the income from convention and trade show activities, already listed at 10 minutes; an amendment by Mr. FORD, capitalization of utilities' interest expense, already listed for 30 minutes; an amendment by Mr. CRANSTON, computer software royalties, down to 5 minutes; an amendment by Mr. GORE, thermal steam transfer facility; an amendment by Mr. ZORINSKY and Mr. BOREN, Internorth; an amendment by Mr. BYRD, UMWA pensions; an amendment by Mr. BOREN, installment sales; an amendment by Mr. KENNEDY, Columbia Point; an amendment by Mr. HEFLIN concerning the IRS, and also an amendment by Mr. HEFLIN which is a technical amendment.

These amendments I have listed, I am advised, are amendments where little time will be required or the authors may be able to work out the amendments. Mr. MITCHELL is listed but that one has been worked out.

I have listed a number of amendments out of the 23 that really amount to not a great deal of time and which probably can just be worked out.

Mr. DODD. Will the minority leader yield?

Mr. BYRD. I yield.

Mr. DODD. I did not know whether the leader read my name.

Mr. BYRD. Mr. DODD is listed with an amendment, but I did not list it as one of the amendments that can be worked out or requires just a small amount of time. Mr. DODD is here and he can speak.

Mr. DODD. I will not be offering that amendment, so you can reduce the list by at least one.

Mr. LEVIN. I also have an amendment there and I would be happy to withdraw it. But I would like 10 or 15 minutes to debate the bill before the final passage.

Mr. BYRD. Mr. LEVIN withdraws his.

Mr. DIXON. Mr. Leader, it has been suggested that the amendment that I have on that list is a duplicate of an amendment that should be on the Republican list that Senator STEVENS had, where I am a cosponsor with Senator STEVENS. So there is that duplication.

Mr. BYRD. I thank the distinguished Senator from Illinois.

Well, there you have it, may I say to the distinguished majority leader and the distinguished managers. But we will have to know the identity of the amendments on the other side or there will be more amendments than I have enumerated.

The PRESIDING OFFICER. The Democratic leader has the floor.

The Senate is not in order.

□ 1810

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. BYRD. Mr. President, I ask unanimous consent that the time being taken here not be charged against the amendment of Senator RIEGLE.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I believe the distinguished Senator from Connecticut had something to say.

Mr. DODD. Just out of curiosity, Mr. President, will it be necessary for those who may not have amendments we care to offer, and without delaying this process at all, to hold some time, whether it is 5 minutes or 10 minutes, at the conclusion of the amendment process just to be able to make some comments about the bill generally at the end? Should that be written into a request for time, along with amendments?

I ask that question of the minority leader.

Mr. BYRD. Mr. President, let me respond to the Senator by saying that there is no request presently being propounded. We are merely trying to make visible those amendments which are on our side which are going to be called up and which may be worked out in a little time. No agreement is being propounded yet.

Mr. DODD. Let me further inquire, if such an agreement is reached, I just make the request that some time be held out so we would have at least some period so we could make some comments generally about the bill before its passage.

Mr. BYRD. The Senator's request will certainly be kept in mind. He will be fully protected.

I would like to yield to Mr. LEAHY, Mr. President, under the same condition.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I have an amendment there on communications satellites. I believe from a conversation I had last night, it is the same one that the distinguished senior

Senator from Virginia [Mr. WARNER] has. I advise the two leaders if it is the same, the two of us would combine that and one or the other drop off, or just combine and make it into one. I am trying to check with the distinguished Senator from Virginia now. If it is the same, I would be perfectly willing to combine with him.

Mr. BYRD. I thank my distinguished friend.

Mr. PRYOR. Mr. President, would the distinguished minority leader yield?

Mr. BYRD. Mr. President, under the same conditions, I yield to the Senator from Arkansas.

Mr. PRYOR. My comment is more generic than on a specific amendment. I hope I could get the attention of the distinguished majority leader here.

I thank the majority leader and I thank the minority leader for yielding. I want to take just a moment to talk about something we talked about when we deal in public works projects. That is something called the benefit-cost ratio. I submit to my colleagues this evening, it is 6:15, we have been up until 1 o'clock two nights in a row. We have been in session 40 hours the first 2½ or 3 days of this week already.

I just want to ask this question: Does our staying up and working on these amendments and on this legislation—do the benefits of staying around here until 1 a.m. every night justify the costs? That is my question.

We were here, for example, Tuesday night until 1 a.m. Mr. President, we voted on four amendments—four amendments—after 7 p.m., each of those nights. On Tuesday night we voted at 8:30 p.m., at 10:06 p.m., and at 12:14 a.m. Then last night we stayed until 1 a.m.; we voted on one at 10:53 p.m.

Mr. President, do the benefits justify the cost?

Mr. LONG. Mr. President, how much was achieved after midnight last night, I want to ask the Senator?

Mr. PRYOR. Mr. President, I respond to my friend from Louisiana by saying that there is something mystical that starts happening around here when the Sun goes down. It is mystical and whatever it is, I say to my friend the majority leader, we all started getting mad at ourselves last night and we are going to do that same thing again tonight. We are tired and we are pretty—we are tired. I do not think the benefits justify the cost. I hope that we shall adopt the Riegle amendment or defeat the Riegle amendment and go home and come back at 7 o'clock in the morning, get some sleep and I think we will make more sense around here.

This is absolutely crazy, our staying around here until 1 o'clock in the morning to vote one time and maybe two times a night. I hope that thought will register and that it will be received in all good humor.

Mr. BYRD. Mr. President, I yield to the distinguished majority leader so he may respond.

Mr. DOLE. All things considered, I think there is a heavy cost-benefit ratio. I have not had many experiences with tax bills, but sooner or later, you just have to pass it. You can push and push. I think last night—well, I have had better evenings, but I think we did make some headway. Everybody sort of got it out of their system. We said, does anybody have any amendments and I will be darned, we got 80 of them overnight. Everybody cleaned out their desks and brought them over here. That is the minus.

I think now we have reached a point where we are down to—we say—10 amendments. I do not think that is right. It is probably 5 or 6. We are within striking distance. I think even on the other side we are within striking distance of wrapping up this bill, if not tonight, by early tomorrow afternoon.

I do not know. It is a tough call. But let us face it—and I am not being critical of anybody: We do not like to vote on Monday. We do not want to vote until after 2 o'clock on Tuesday, we do not want to vote on Friday. So we work a halfday Tuesday, maybe all day Wednesday, maybe all day Thursday. And sometimes we have to go late to compensate for it.

I would say, if we still had 90 amendments, the Senator is exactly right. There was not any benefit, there was a lot of cost. I know a lot of Members have important engagements tonight. I had one, I do not have it any longer. I just said, "I will stay here."

I would like to yield to my distinguished chairman if the distinguished minority leader will allow me to yield to him.

First, I think this is good news on our side. TED STEVENS has nine amendments; Senator MATTINGLY has one. Senator HATCH has one that is worked out. Senator ABDNOR has one that is going to be contested, with 30 minutes. Senator MCCONNELL has two that may be contested.

Mr. BYRD. Would the distinguished majority leader allow me to suggest that those amendments be identified, because it is important that we know what they are?

Mr. President, may my rights be protected?

The PRESIDING OFFICER. That is the unanimous consent.

Mr. DOLE. We do not have the Stevens amendments identified. We have the three on reindeer income, Alaskan Native Corporation, then there is an ESOP amendment with the Senator from Illinois. The Hatch amendment is on ERISA.

Mr. PACKWOOD. That has been cleared on both sides.

Mr. DOLE. Senator MATTINGLY on a 5-year moratorium, that would be the sense of the Senate. Senator ABDNOR is a Mesabi (?) Airlines amendment. Senator MCCONNELL, parimutual betting and the Brown Foundation. I assume those will be contested.

Senator HELMS on aborted fetus, Senator ARMSTRONG on mutual funds, and there are two or three or four others that may just be a matter of a brief colloquy.

I think we are in the homestretch.

Mr. PACKWOOD. Mr. President, would the minority leader yield to me?

Mr. BYRD. Mr. President, I yield. I ask unanimous consent that I may yield without losing my right to the floor. I do not intend to hold the floor very long.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PACKWOOD. I would like to renew the possibility of a time agreement. I know what some Members are afraid of: You agree to a time limit and out pops an amendment everybody wishes they had not agreed to a time limit on. I know a number of amendments the majority leader read on our side will not be offered. They have said they would not be offered if they knew I was opposed and I know the ones I am going to oppose.

□ 1820

If we had a unanimous consent that no amendments could be considered that were not filed—I am not saying there is any time limit on what is filed—could not be considered that are not filed at the desk by 8 o'clock and if we had an agreement that we would meet tomorrow and vote tomorrow starting early, I would be satisfied to go out tonight with those two agreements. But that means we could all come here in the morning and see what amendments are there, and I think with that we will dispose of 9 or 10 or 11 amendments tomorrow and have a chance of either finishing tomorrow or finishing at a time certain Monday.

Mr. PRYOR. If applause were permitted on this floor, I would stand and applaud but I say thank you and I hope that suggestion will be accepted.

Mr. BYRD. Mr. President, I certainly want to do everything I can to get all Members out this evening, and I will be happy for us to talk about this. There is an amendment that has been identified that creates problems and we do not want—let me lay it all out while I am here. There are other Senators who have amendments that I did not identify because I simply went down the list of those which can be worked out without much time or on which little time will be requested if they cannot be worked out.

Mr. BAUCUS has an amendment and is on the floor. On this list I would say that it indicates that there are 2 hours on the farmer carryback ITC amendment. May I ask the distinguished Senator, does he still want 2 hours or can that time be reduced?

Mr. BAUCUS. Mr. Leader, that amendment is still going to be offered but the time can be reduced.

Mr. BYRD. The amendment has been offered?

Mr. BAUCUS. I still intend to offer the amendment.

Mr. BYRD. Very well.

Mr. BAUCUS. The time can be reduced.

Mr. BYRD. Very well. I thank the distinguished Senator. Then, Mr. BUMPERS has an amendment to strike the amnesty provisions in the bill. Now, I did not list that one earlier because I have already indicated the limitations. And then, an amendment by Mr. MELCHER relating to capital gains in agriculture with revenue offsets and deferral of income. That is listed as 30 minutes, but the distinghished Senator is here. I have the list, 30 minutes on an amendment by Mr. MELCHER.

Mr. MELCHER. That is correct, I would inform the minority leader.

Mr. BYRD. I thank the distinguished Senator. Mr. CHILES has a sense-of-the Senate amendment relating to budgetary effects of the tax bill, with no time listed on that amendment. I believe Mr. CHILES indicated last evening it would not take long. I thought he said something like 1 hour at the most, perhaps, but I would not want to tie him in with a restriction which may be erroneous. Mr. METZENBAUM has an amendment on voluntary tax disclosure for amnesty. I yield to Mr. METZENBAUM.

Mr. METZENBAUM. I thank the minority leader. I am pleased to say that several of my amendments have been adopted during the day by agreement. We have negotiated them. I have one additional amendment with Senator CHAFEE. We worked that out. We have come to a compromise on it. I think that will not take us more than about 10 minutes at the maximum, 5 minutes on a side.

But I would like to add one other thing. In seeking a unanimous-consent agreement, I strongly urge the majority leader and the minority leader and the manager of the bill it might be helpful if, before doing that, Senator HELMS were given an opportunity to call up his amendment. I understood he was going to call it up. He is not going to call it up at all? Then if not, no problem.

Mr. BYRD. I also am told, Mr. President, that Mr. BAUCUS may have one or two second-degree amendments to the Bumpers amendment. Is there a time limit which the distinguished Senator would suggest or not?

Very well. There is no suggested time limit at this point.

Mr. President, I am about to yield the floor. I feel very encouraged, may I say, by the responses, and I think if we could proceed with an amendment at the moment, perhaps we could get an agreement that would see us out tonight and hopefully not have more than one or two rollcall votes tomorrow, with no more amendments to be offered than those that have been identified, with a time certain to vote certainly early next week, Monday or Tuesday.

Mr. DOLE addressed the Chair.

Mr. BYRD. Mr. President, I yield the floor. I thank all Senators.

The PRESIDING OFFICER. The order of business will be to return to the Senator from Michigan who has an amendment pending. In order to divert from that we would have to have unanimous consent.

Mr. RIEGLE. I certainly withhold without losing my right to proceed for any comment that the majority leader wishes to make or if he wishes the floor at this time.

Mr. SIMPSON. Mr. President, may I just——

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator has surrendered the floor for the purposes of the leader to speak. He will regain the floor once that time passes.

Mr. SIMPSON. If I might just respond to my friend from Arkansas [Mr. PRYOR], a lovely friend of mine who came here when I did. I was assigned the task by the majority leader of trying to arrange the calendar for what we do here—which is sometimes hard to describe. But in the course of that, we arranged the most extraordinary calendar that I think we have ever had in any election or nonelection year.

We had the February Presidents' Day recess, an Easter recess, a Memorial Day recess, and a July Fourth recess, which goes from June 27 to July 14—which has never happened in the history of this body—an August recess which starts on August 15 and goes through Labor Day, until September 7, and on October 3 the Chambers will be exited regardless of what happens on the floor because it is an election year.

That I think is an extraordinarily generous schedule. I share that. Others on the other side of the aisle also worked with that.

If we have irritation and a touch of madness at this hour of our dealings, it should be with our staffs who keep cooking this stuff up, who have been dragging stuff around in their hip pockets for about a year-and-a-half and finally say, "This is it; please get this." Last night we asked for the various amendments. Some shred of paper dropped from the ceiling that had five amendments for Senator so and so. He did not even know what they were.

And so in the morning hour, if we could look at the list of amendments, I think that would be critical to us. We really should not be hard on ourselves. We should be hard on our staffs who continue to feed the stuff in and cook the stuff up in the back rooms. If they could stay here and we could go sleep, I think that would be good. They are up in shifts.

I just conclude by saying I think the majority leader has been very kind to us. We do not do any heavy lifting on Mondays or Fridays. We do not do windows. We do not haul trash. And we get paid 75,000 bucks a year for doing that. And on the occasions when we do get to go two nights, three nights, it is tough, and I am fractious too. I am sitting now next to my colleague from Alaska, and I unloaded a barrel on him last night. I need to sit with him and try to resolve that, and I will do that because that is the way we must do our work. The only thing that ever saves us is the Friday syndrome. Every bill should be started on a Wednesday because Friday is the only thing that ever makes us push toward getting our work done. I hear what my colleague is saying, but we really are a rather privileged group. I am not saying that in any kind of reaction to my friend from Arkansas, but just to share how we worked this schedule out, and it is the most generous one in our history—and still it is not good enough. I thank the Senator for yielding.

□ 1830

Mr. RIEGLE. Mr. President, does the majority leader wish me to yield?

Mr. DOLE. I apologize to my friend from Michigan.

The PRESIDING OFFICER. If the majority leader will suspend, the Senate is not in order.

Without objection, the Senator from Michigan yields.

Mr. DOLE. Without it coming out of the Senator's time.

Mr. President, I want to indicate that we are going to meet now with the minority leader. I am very much encouraged. I think we have reached the point in the tax bill where things are coming together.

I hope we can come back here in 20 minutes and propound the unanimous-consent request that only those amendments that have been filed at the desk by, say, 9 o'clock this evening will be considered. Then Members on both sides will know what they are dealing with.

If someone tosses an amendment up in the air, it is like a turkey shoot. We do not know what is in the amendment. That would be unfair, particularly to the managers.

It is the intention of the chairman that we continue. If Members want to dispose of some of these easy amendments, we can do a lot of that this evening, and tomorrow there would be votes, and we would hope to finish tomorrow by midafternoon. There is no reason why we cannot finish. We are down to hardly anything.

AMENDMENT NO. 2114

Mr. RIEGLE. Mr. President, I have an amendment at the desk, which I will ask the clerk to read, on which we have a unanimous-consent agreement that there will be only 5 minutes. At this time, I ask for the yeas and nays on this amendment.

The PRESIDING OFFICER. Will the Senator suspend until the clerk has had an opportunity to report the amendment?

Mr. RIEGLE. Of course.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. RIEGLE] proposes an amendment numbered 2114:

At the appropriate place add the following:

It is the sense of the Senate that the Senate conferees on the Tax Reform Act of 1986 give the highest priority to increasing the tax cut for all middle income Americans.

Mr. RIEGLE. Mr. President, on this amendment I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Michigan is now recognized for 5 minutes.

Mr. RIEGLE. I thank the Chair, and I thank my colleagues. I may not have to take the full 5 minutes.

Mr. President, the amendment has been read. It is only one sentence long. It addresses the question of how the middle-class taxpayers of this country will ultimately do in this tax bill. I offer this amendment at this time because we have two very complex bills coming from the different bodies. Our bill is long, with many items, as is the bill from the House, and they are quite different in many respects. When we get to conference, those two versions will have to be ironed out, and because of that, there will be a number of items that not only have to be dealt with, but also, I think there will be a number of things for the conferees to keep track of.

The PRESIDING OFFICER. Will the Senator suspend? The Chair cannot hear the Senator. We will not proceed until the Senate is in order.

The Senator from Michigan.

Mr. RIEGLE. Mr. President, in talking to colleagues on both sides of the aisle, I think this sense-of-the-Senate resolution expresses what I am hearing from my colleagues, and that is that there is a concern that we be sure that the middle class receives the proper treatment in this tax bill.

Mr. MOYNIHAN. Mr. President, I cannot hear the Senator from Michigan.

The PRESIDING OFFICER. The point raised by the Senator from New York is well taken. The Senate is not in order. There are at least four groups of Senators observed by the Chair who are now engaged in animated conversation. Those Senators are respectfully asked to retire to the cloakroom.

The Senate is not in order. We will not proceed until the Senate is in order.

The Senator from Michigan.

Mr. RIEGLE. I thank the Chair. I think what we are seeing here is that the earlier effort to try to negotiate time agreements and work out amendments is now moving ahead, so there are a variety of conversations going on, with the purpose in mind of getting that unanimous-consent agreement. So I understand why there is so much activity at this time.

Mr. President, I think this amendment emphasizes what I am hearing colleagues on both sides of the aisle say, and that is that there is a concern that we try to do more with respect to tax relief for the middle class, and the feeling that we can, and the place to do that is in conference.

The format I am using is the same as the one that was used in the IRA sense-of-the-Senate resolution. We say in this instance:

It is the sense of the Senate that the Senate conferees on the Tax Reform Act of 1986 give the highest priority to increasing the tax cut for all middle-income Americans.

That is very compatible with the previous sense-of-the-Senate resolution which was adopted with respect to IRA's, because one of the ways I think we can do what this amendment addresses is with some measure of the IRA restoration, which I hope will be forthcoming.

So I hope the Senate will support this amendment. I think it will be a helpful one to the conferees and to the conference, and I think it will be one that middle Americans will be very grateful for.

I yield back the remainder of my time.

Mr. PACKWOOD. Mr. President, I wholeheartedly support this amendment, and I hope it will be adopted on a rollcall vote unanimously.

Mr. RIEGLE. I thank the chairman of the committee.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment of the Senator from Michigan. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from Minnesota [Mr. DURENBURGER], the Senator from Idaho [Mr. MCCLURE], and the Senator from Idaho [Mr. SYMMS] are necessarily absent.

Mr. CRANSTON. I announce that the Senator from Massachusetts [Mr. KENNEDY] and the Senator from Mississippi [Mr. STENNIS] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 94, nays 1, as follows:

[Rollcall Vote No. 143 Leg.]

YEAS—94

Abdnor	Glenn	Metzenbaum
Andrews	Gore	Mitchell
Armstrong	Gorton	Moynihan
Baucus	Gramm	Murkowski
Bentsen	Grassley	Nickles
Biden	Harkin	Nunn
Bingaman	Hart	Packwood
Boren	Hatch	Pell
Boschwitz	Hatfield	Pressler
Bradley	Hawkins	Proxmire
Bumpers	Hecht	Pryor
Burdick	Heflin	Quayle
Byrd	Heinz	Riegle
Chafee	Helms	Rockefeller
Chiles	Hollings	Roth
Cochran	Humphrey	Rudman
Cohen	Inouye	Sarbanes
Cranston	Johnston	Sasser
D'Amato	Kassebaum	Simon
Danforth	Kasten	Simpson
DeConcini	Kerry	Specter
Denton	Lautenberg	Stafford
Dixon	Laxalt	Stevens
Dodd	Leahy	Thurmond
Dole	Levin	Trible
Domenici	Long	Wallop
Eagleton	Lugar	Warner
East	Mathias	Weicker
Evans	Matsunaga	Wilson
Exon	Mattingly	Zorinsky
Ford	McConnell	
Garn	Melcher	

NAYS—1

Goldwater

NOT VOTING—5

Durenberger	McClure	Symms
Kennedy	Stennis	

So amendment No. 2114 was agreed to.

□ 1850

Mr. DOLE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. RIEGLE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. president, may we have order?

The PRESIDING OFFICER. The Senate is not in order. Those Senators engaged in conversation are asked to take their seats.

The majority leader.

Mr. DOLE. Mr. President, let me indicate to my colleagues that we have met in the minority leader's office and are going back in about 10 minutes. We think we may be able to put to-

gether a little deal that everybody may be fairly satisfied with.

But, in the meantime, I think it is our hope that we just continue to do business and paricularly those where the amendments can be agreed to. We will be back to you as quickly as we can.

Mr. BYRD. Will the distinguished majority leader yield?

Mr. DOLE. Yes.

Mr. BYRD. Mr. President, I hope that the amendments that can be agreed to without rollcall votes this evening would be pressed. It would seem to me there might be several disposed of.

Mr. EVANS addressed the Chair.

The PRESIDING OFFICER. The Senator form Washington.

Mr. EVANS. Mr. President, I have two amendments which have been cleared on both sides. I do not think either one should take more than 1 minute or so.

The PRESIDING OFFICER. The Senate is not in order.

The Senator from Washington.

AMENDMENT NO. 2118

Mr. EVANS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment of the Senator from Washington.

The legislative clerk read as follows:

The Senator from Washington [Mr. EVANS] proposes an amendment numbered 2118.

Mr. EVANS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads as follows:

At the appropriate place, insert the following new section:

SEC. . QUALITY CONTROL STUDIES.

"Section 12301 of the Consolidated Omnibus Reconciliation Act of 1985 is amended—

(1) in subsection (a)(3), by striking out "of enactment of this Act" and inserting in lieu thereof "the Secretary and the National Academy of Sciences enter into the contract required under paragraph (2)";

(2) in subsection (c)(1) by striking out "18 months after the date of enactment of this Act" and inserting in lieu thereof "6 months after the date on which the results of both studies required under subsection (a)(3) have been reported"."

The PRESIDING OFFICER. The Senate is not in order.

The Senator from Washington.

Mr. EVANS. Mr. President, I rise to offer an amendment making technical corrections to the AFDC/Medicaid quality control section of the reconciliation measure we passed earlier this year.

Quality control is a system used to measure State performance in administering Federal income assistance programs. In addition, it is used to impose large fiscal penalties against States when their error rates in program administration exceed federally established tolerance levels.

Because of the considerable and compelling evidence suggesting that our existing quality control procedures provide neither an accurate nor equitable measurement of State performance we included a provision in reconciliation authorizing HHS and the National Academy of Sciences to conduct comprehensive studies of the Federal quality control system

The studies were to be 1 year in duration with the results to be reported to Congress no later than December 31, 1986. Because reconciliation was passed much later than anticipated, this existing deadline would give NAS and HHS only a few months to complete the studies. My amendment would rectify this unintended situation by making the 1-year period commence when NAS and HHS enter into the contract for the studies. This amendment would ensure that they have ample time to complete the comprehensive review we have authorized.

Mr. President, earlier this year on the reconciliation bill we passed a measure which would authorize a study on Medicaid and AFDC in terms of the error rates. That study was to take a year. But unfortunately the bill took so long to get passed that we need now to just change the dates so that the year starts running from the time the study started instead of the time the bill passed.

This has been cleared on both sides. I believe it is acceptable to both sides. I urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Washington.

The amendment (No. 2118) was agreed to.

AMENDMENT NO. 2119

(Purpose: To amend the gas guzzler tax provisions of the Internal Revenue Code)

Mr. EVANS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. EVANS] proposes an amendment numbered 2119.

Mr. EVANS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2584, line 16, strike out the words "IN GENERAL." and insert in lieu thereof "IN GENERAL. (i)"

On page 2584, after line 20 insert the following: "(ii) Clause (ii) of section 4064(b)(1)(A) (defining passenger automobile) is amended by striking out "gross vehicle weight" and inserting in lieu thereof "unloaded gross vehicle weight." "

"(iii) Section 4064(b)(5) is amended to provide that the definition of "manufacture" shall not include any "small manufacturer" as defined in section 4064(d)(4) who becomes a manufacturer solely by reason of lengthening an existing automobile."

"(C) The amendments made by clauses (ii) and (iii) of Subparagraph (A) shall apply only to automobiles manufactured after October 31, 1985."

Mr. EVANS. Mr. President, I am offering an amendment which clarifies two different definitions contained in the gas guzzler tax provisions of current law.

The gas guzzler tax was enacted in 1978 to encourage manufacturers to make fuel-efficient automobiles. In conjunction with safe standards, the gas guzzler tax provisions have helped us move toward our real goal of a truly fuel-efficient fleet of automobiles on the Nation's highways.

Automobiles to which the tax applies are defined in part by gross vehicle weight. Under current law, passenger vehicles in excess of 6,000 pounds gross vehicle weight are not considered automobiles for purposes of the gas guzzler tax provisions.

This amendment would close a loophole in determining gross vehicle weight that has been used by some manufacturers to avoid since 1978 the application of this tax to their heavier cars. By clarifying that the term gross vehicle weight means unloaded gross vehicle weight, it will prevent taxpayers from avoiding the application of these provisions to a vehicle that is below the weight threshold as manufactured, and thus subject to the provisions, but above the weight threshold when loaded with passengers and luggage. This will rectify a current inequity where certain manufacurers are able to avoid paying the tax by taking advantage of the loophole but other, similarly situated manufacturers pay the tax which Congress intended for them to pay.

A second definitional modification provided in this amendment is to refine the meaning of "manufacturer" under the gas guzzler tax provisions. Under current law, a number of small businesses engaged in converting standard luxury cars into stretch limousines have been determined to be "manufacturers." As a result these converters have been subject to the possibility of double taxation: once on the original production automobile, and again on the final product. Yet, these converters do not have the capability of affecting gas mileage because they do not modify the engine, drive train or other related mechanical part. They merely lengthen a car on which any gas guzzler tax which would apply should have paid. The modification made by the amendment would relieve

these mostly small businesses from potential tax liability.

I want to note for my colleagues that the amendment I am proposing takes a much more equitable approach to this question than is taken in the House bill because it applies only to automobiles manufactured after October 31, 1985, and is thus prospective rather than retrospective.

Mr. President, this would be a prospective—and I emphasize the word "prospective"—correction of a loophole in the law relating to the gas mileages which I think quite honestly needs to be closed. It has been checked with both sides, and I believe it is acceptable. In the past, automobiles of 6,000 pounds and over were not considered to be automobiles and were thus exempt from some of the requirements for fuel efficiency. A few automobiles manufacturers found it to their advantage to escape the law on automobiles that were heavy but not quite 6,000 pounds by merely loading the car with "Refrigerator" Perry, and a few of his colleagues and a few sacks of cement in the back to make the car over 6,000 pounds. But by doing that, they escape any penalty by missing gas mileage requirements.

This amendment would correct it. It has no fiscal impact because it is prospective and not retrospective. It ensures that a limousine manufacturer does not get taxed twice by exempting those manufacturers of stretch limousines from the provisions of this amendment.

I believe it has been cleared on both sides. I urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Washington.

Mr. BENTSEN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. I withdraw the reservation.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Washington.

The amendment (No. 2119) was agreed to.

Mr. EVANS. Mr. President, I move to reconsider the votes by which the amendments were agreed to.

Mr. BENTSEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2120

(Purpose: To provide for an effective 15-year carryback of existing investment tax credit carryforwards of farmers)

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I send an amendment to the desk on behalf of myself, Mr. ABDNOR, Mr. GRASSLEY, Mr. ZORINSKY, Mr. HARKIN, Mr. MELCHER, Mr. DOLE, Mr. SYMMS, Mr. HEFLIN, Mr. PRYOR, and Mr. BENTSEN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS] for himself and Mr. ABDNOR, Mr. GRASSLEY, Mr. ZORINSKY, Mr. HARKIN, Mr. MELCHER, Mr. DOLE, Mr. SYMMS, Mr. HEFLIN, Mr. PRYOR, and Mr. BENTSEN, proposes an amendment numbered 2120.

Mr. BAUCUS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title II, insert the following new section:

SEC. 213. EFFECTIVE 15-YEAR CARRYBACK OF EXISTING CARRYFORWARDS OF QUALIFIED FARMERS.

(a) GENERAL RULE.—If a taxpayer who is a qualified farmer makes an election under this section for its 1st taxable year beginning after December 31, 1986, with respect to any portion of its existing carryforwards, the amount determined under subsection (b) shall be treated as a payment against the tax imposed by chapter 1 of the Internal Revenue Code of 1954 made by such taxpayer on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for such 1st taxable year.

(b) AMOUNT.—For purposes of subsection (a), the amount determined under this subsection shall be equal to the smallest of—

(1) 50 percent of the portion of the taxpayer's existing carryforwards to which the election under subsection (a) applies,

(2) the taxpayer's net tax liability for the carryback period (within the meaning of section 212(d) of this Act), or

(3) $750.

(c) NO RECOMPUTATION OF MINIMUM TAX, ETC.—Nothing in this section shall be construed to affect—

(1) the amount of the tax imposed by section 56 of the Internal Revenue Code of 1954, or

(2) the amount of any credit allowable under such Code,

for any taxable year in the carryback period.

(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) QUALIFYING FARMER.—The term "qualified farmer" means any taxpayer who, during the 3-taxable year period preceding the taxable year for which an election is made under subsection (a), derived 50 percent or more of the taxpayer's gross income from the trade or business of farming.

(2) EXISTING CARRYFORWARD.—The term "existing carryforward" means the aggregate of the amounts which—

(A) are unused business credit carryforwards to the taxpayer's 1st taxable year beginning after December 31, 1986 (determined without regard to the limitations of section 38(c) of the Internal Revenue Code of 1954), and

(B) are attributable to the amount of the investment credit, determined under section 46(a) (or any corresponding provision of prior law) with respect to section 38 property which was used by the taxpayer in the trade of business of farming.

(3) FARMING.—The term "farming" has the meaning given such term by section 20321(e) (4) and (5) of such Code.

(4) TENTATIVE REFUND.—A rule similar to the rule of section 212(h) of this Act shall apply.

(e) RESTRICTION ON ACQUISITION OF CERTAIN LAND NOT TO APPLY TO QUALIFIED REDEVELOPMENT BONDS.—Section 103(b)(5)(f), as added by section 1501(c) of this Act, is amended by striking out "Paragraph (16)" and inserting in lieu thereof "Paragraph (16)(A)(ii)".

Mr. BAUCUS. Mr. President, there have been several amendments offered in the last day or two attempting to give some relief to farmers. Most of those amendments have not passed because of the difficulty in finding a good——

The PRESIDING OFFICER. Will the Senator refrain for a moment so we can get order in the Chamber? Staff will please retire and be seated so there will be order in the Chamber.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I thank the Chair.

Various amendments have been offered in the last 2 days attempting to give some relief to farmers. Most of those amendments have not passed because of the difficulty of finding an acceptable revenue-raising offset. The amendment that I am offering partly, or perhaps entirely, alleviate that problem. This amendment provides a limited investment tax credit carryforward for farmers. That costs $200 million over 5 years.

We offset this cost, Mr. President, by closing an unintended loophole in the Finance Committee bill.

Under current law, industrial development bonds can be utilized only when not more than 25 percent of the proceeds are used to acquire agricultural land. In addition, none of the proceeds, of IDB's can be utilized to acquire agricultural land, unless it is for a beginning farmer. In the committee bill, we established new rules for a kind of bond known as a tax-increment financing bond. These are used for redevelopment, shopping centers, and so forth. In drafting that provision, we unwittingly opened up a loophole permitting TIF bonds to be used for agricultural land. Therefore, the bill makes IDB proceeds not only for the beginning farmers' program, but for all farmers. That was unintended.

Mr. President, I think we do not want to open up this loophole. With the huge commodity suplus we have in America today, we should not be subsidizing the expansion of large existing operations, that is one reason why the prices are so low and why farmers' incomes are so low.

We raise the $200 million by closing that loophole. The $200 million would then go to farmers, enabling them to carryback their unused ITC's.

It works out that, because of the $200 million limitation, farmers can only carryback 50 percent of their unused ITC's and the upper dollar limit must be $750 per farmer. That is not very much, Mr. President. It is not very much compared to the provision in the committee bill which gives unused ITC carrybacks to the steel industry. That provision cost about $500 million. Some steel firms might be getting refunds in the amount of $10 million, $20 million, maybe up to $50 million. The limit in this is only $750 per farmer.

I suggest it is a good amendment. Farmers are very heavily capitalized, compared with the income that they earn, or theoretically could earn. Combines are expensive, tractors are expensive. Also, during the last few years, they have been basically unable to utilize ITC's in the current law because they have had no income.

This amendment allows farmers to carryback over several years. If we can do it for steel, we certainly can do it for farmers. We know the steel industry is in tough shape. That is why we here in the Senate voted to keep that provision in the law. I voted for it. I think the steel industry needs it. But I think also the farmers need unused ITC's to carry them back in the same way that we have in the steel industry.

Mr. President, I can explain it in more detail if other Senators wish. Essentially this is something that our farmers need, and we found a way to pay for it in a way that does not hurt anybody.

The PRESIDING OFFICER. Is there further debate?

● Mr. ZORINSKY. Mr. President, 2 days ago, this body approved a special tax provision for the steel industry. That provision allows steel companies to apply part of their investment tax credits [ITC] against taxes paid in previous years. I am pleased today to join in offering an amendment to extend this treatment to farmers. Our amendment provides needed tax relief for our agricultural economy.

Mr. President, farming is an extremely capital intensive industry. With the high level of mechanization used on today's farms, very few workers are needed to plant and harvest most of our crops. As in any capital intensive industry, the ITC was used to purchase and modernize equipment. Under the tax reform bill, however, the ITC is eliminated effective January 1, 1986. To ease the transition, any credits already earned may be carried forward for 15 years at 70 percent of their value.

Steel companies, however, are given the option of applying these credits against taxes paid in previous years at 50 cents on the dollar. This provision was added by the committee and survived a separate vote by the entire Senate. Our amendment simply gives farmers this same option, with a limit of $750 in any 1 year. This amounts to $200 million worth of tax relief over the next 5 years.

We pay for our amendment by closing a loophole for a special type of tax-exempt bond. Congress intended for these bonds to be used to redevelop blighted urban areas. First time farmers could also use these bonds to finance the purchase of farm land. The tax reform bill creates a loophole, however, which would allow investors who are not first time farmers to use these bonds to finance farmland purchases. Our amendment would simply close that loophole so that the bill conforms with current law.

Mr. President, H.R. 3838 is a good bill. It brings us much closer to a fair and efficient tax system. Room for improvement still exists however. With our amendment, the tax bill better addresses the needs of our crippled farm economy and I urge my colleagues to give the amendment their support.

● Mr. PRYOR. Mr. President, I support the amendment of the Senator from Montana [Mr. BAUCUS]. This amendment will allow those persons engaged in farming to carry back to previous taxable years some of their unused investment tax credits.

Mr. President, the agricultural sector of our economy is in need of help, and since the Congress decided to allow steel companies to use these credits, farmers should also be allowed to do the same. This is only fair.

I strongly support this amendment and urge its adoption.●

Mr. MELCHER. Mr. President, I am pleased to join with my colleague from Montana, Senator BAUCUS, as a cosponsor of this amendment which will permit farmers and ranchers to cash out part of their unused investment tax credits.

Farmers and ranchers haven't had enough income in recent years to really get the advantage that was supposed to come from the investment tax credit. As a result, today there are $3 billion in unused investment tax credits being carried by farmers and ranchers. The bill we are considering both repeals the investment tax credit for the future and takes away 30 percent of the unused investment tax credits held by farmers and ranchers. This is a bad deal all around for agriculture. It seems only tax equity to allow those in agriculture to get some relief as the steel companies get in this bill.

This amendment will make the bill a little more fair for agriculture by permitting farmers and ranchers to trade in up to $750 of their unused investment tax credits for cash. This cash-out provision was included in the bill for steel companies and I think that permitting hard-pressed and cash-short farmers and ranchers to have a little of the same benefit is a definite improvement in the committee bill.

Mr. BAUCUS. Mr. President, Senator DURENBERGER asked that he be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Will the Senator from Montana yield for a question? Will he tell us how much this costs, and whether it is revenue neutral?

Mr. BAUCUS. It is revenue neutral. It is $200 million that was found in the Finance Committee bill because the Finance Committee bill unknowingly opened up a $200 million loophole. I, like the Senator from Ohio, like to close loopholes. We are closing this loophole, and applying that $200 million to the farmers who basically are in dire straits.

Mr. METZENBAUM. I thank the Senator.

Mr. ABDNOR addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. ABDNOR. Mr. President, I am very pleased to be a cosponsor of this amendment. I commend the Senator from Montana for his hard work in finding a place to make this amendment revenue neutral.

Mr. President, early in the Finance Committee's deliberations over tax reform, a concept which holds great appeal for the farmers of America was considered. That is the idea, as the Senator from Montana said, of allowing those with carried forward investment tax credits to redeem them for cash at a discounted rate.

□ 1910

Because farmers have suffered from very low earnings in recent years, they have not been able to utilize investment credits they have earned with the purchase of machinery and equipment in earlier years when more profitable times allowed them to do so. According to the bill under consideration, their credits will be discounted, but they will not be entitled to redeem them for cash.

Mr. President, I must admit I was delighted when I heard that the Finance Committee was initially considering redeeming ITC's for cash. There could be no greater shot in the arm for agriculture than the cash infusion brought about by cash redemption. Regrettably, the cash redemption approach was not retained as a provision in the Finance Committee's final draft, H.R. 3838. It would have been a godsend for agriculture.

However, a special cash-out rule has been provided the steel industry based on the argument that the steel indus-

try is chronically distressed and will not be able to apply the investment credits steel companies have earned to reduce future tax liability. Mr. President, the same argument applies with even greater urgency to farmers. Agriculture is a depressed industry, and farmers are starved for cash to keep their operations running. USDA estimates that farmers are carrying $3 billion in unused investment tax credits.

Maybe $3 billion does not seem to be very much to some, but I will tell you that it means a great deal to the farmers of this country.

Mr. President, in this day and age, cash-flow is the operative rule in maintaining a viable farm operation. The amendment under consideration does not provide the cash-flow relief I had hoped it would at the outset. Quite frankly, there are not a whole lot of revenue raisers left. Two nights ago, I had hoped we could offer an amendment which would have provided about $10,000 worth of cash-flow relief per farm operator. Unfortunately, the revenue offset we had in mind has since been used.

The fact that we are willing to reduce this amount to $750 should indicate to the Senate how important we think even a small amount can be to farmers.

Mr. President, the amendment we offer is a scaled-down version of what we had originally envisioned. Despite that, this amendment still serves a vital role in helping ease the stress in the farm sector. I submit to this body that anytime we can offer farmers a cash injection of this sort, regardless of the amount, we are providing a practical solution to their problems. I do not need to elaborate on the statistics which point to the gravity of the situation in the farm sector. I assure you that the Farm Belt is every bit as depressed as any sector of our economy. And like steel and like energy, farmers are victims of circumstances largely beyond their control.

Mr. President, what we are suggesting is that agriculture be accorded transitional treatment similar to that granted the steel industry. In the same way that steel is basic to this country's international competitiveness, so is agriculture. No sector of our economy is more basic to the long-term prosperity of our country and no institution is more fundamental to the fiber of this Nation than agriculture.

Mr. President, I am firmly convinced that a cash redemption transition rule which is targeted at bona fide family farmers will do this tax bill and this Nation a great service. And, Mr. President, this amendment is directed at bona fide, full-time family farmers. Only those who have derived 50 percent or more of their gross income in the form of earned income derived from the trade or business of farming would be eligible to redeem their unused investment credits.

Further, eligibility would be limited to credit earned on property primarily used in the business of farming. Credits would be redeemed at 50 percent of their current value, with the recoverable amount per operator per year capped at the amount afforded by the revenue offset. Any excess amount would be carried forward according to the rules generally applicable under H.R. 3838.

Mr. President, the price tag for this amendment will be offset by strengthening the eligibility requirements for usage of IDB's by agricultural enterprises. The proposed offset would prevent all but first-time farmers from using IDB bond proceeds to purchase agricultural land.

Currently, language in the Finance Committee bill allows usage of IDB proceeds for purchase of farmland by individuals who do not meet the first-time farmer test. The committee language, therefore, circumvents a restriction in present law which prevents Federal tax subsidies from being used to finance the expansion of large, existing operations. Our amendment would restore the present law restriction to the committee bill. This raises approximately $200 million over 5 years, $200 million which could assist in improving the cash-flow picture for this country's farmers.

Mr. President, this is a good amendment, a needed amendment. It is one that will offer relief. I urge adoption of the amendment.

Mr. BENTSEN. Mr. President, we all know it has been quite a long time since farmers have earned a profit. I hope that this can be utilized in the farming community. I know of no objection on our side.

Mr. PACKWOOD. Mr. President, we find the amendment very satisfactory and hope the Senate will vote for it unanimously.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2120) was agreed to.

Mr. BAUCUS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. PACKWOOD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2121

(Purpose: To provide a transitional rule for estate and gift tax treatment of disclaimers of property)

Mr. METZENBAUM. Mr. President, I wish to refer to that provision of the bill which will enable some taxpayers to claim $136 million in tax refunds. We have looked at this provision and have done so in cooperation with the Senator from Rhode Island, who is much more familiar with the subject than I am and was the individual who had sponsored the amendment in the committee, I believe.

We have now been able to work out an amendment that I believe will resolve the problem.

Frankly, I do not believe that we should overturn Supreme Court decisions retroactively. The amendment I am about to send to the desk which would affect the provision presently in the bill, would provide relief only to those taxpayers who have relied on a decision by a district court.

It would not provide relief to those who failed to act in accordance with IRS regulations after the court of appeals upheld them.

Mr. President, I believe this is a fair compromise.

Mr. President, the provisions of the bill involved about $136 million of lost revenue. The amendment that has been worked out in compromise does not save that great an amount. It only saves about $10 million. But the Senator from Ohio has not offered amendments in the past based upon the dollar amount, but, rather, on what seems to be a fair and reasonable approach to the problem.

The way this amendment now would fall, it would protect those who had relied upon an earlier court decision and would not provide protection to those who failed to act after the court decision had been handed down.

Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. METZENBAUM], for himself and Mr. CHAFEE, proposes an amendment numbered 2121.

Mr. CHAFEE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2432, beginning with line 15, strike all through page 2433, line 12, and insert:

With respect to an interest in property created by a gift, devise, or bequest made before November 15, 1958, a disclaimer by a person of such interest (in whole or in part) shall not be treated as a transfer for purposes of chapters 11 and 12 of subtitle B of the Internal Revenue Code of 1954 if such disclaimer satisfies the requirements set forth in Treasury Regulation Section 25.2511-1(c) as in effect at the time the disclaimer was made. For purposes of this section, the requirement of such regulation that the disclaimer be made within a reasonable time after knowledge of the existence of the transfer shall be satisfied if such disclaimer was made in writing before December 9, 1980, and no later than a reasonable time after termination of all interests in such property prior to the disclaimed interest.

Mr. CHAFEE. Mr. President, I have just been informed that Senator LONG has a problem with this amendment. I ask unanimous consent that we might temporarily set this amendment aside and take up other amendments. Hopefully this can be resolved.

Mr. President, I thought everything was straightened out. The amendment that was adopted in the committee was far broader than this amendment. In other words, this amendment cuts back on what we adopted in the committee.

I have been informed of Senator LONG's concern and, therefore, would ask unanimous consent that we postpone this and take it up at a future time.

Mr. METZENBAUM. Mr. President, I have only been concerned about moving forward with this, because I hear the Senator from Rhode Island is about to leave for a great occasion, the wedding of his daughter. Will he be able to remain until we dispose of this, or, if we have not disposed of it by that time, could he represent to the Senate that the amendment was satisfactory?

□ 1920

Mr. CHAFEE. He can certainly represent this amendment is to my satisfaction. I want this important amendment, but I find other matters of greater urgency at the present time, so I would appreciate it if the Senator could represent my views, which he is very familiar with. I am in complete accord with the amendment he has submitted.

Mr. METZENBAUM. Mr. President, I join the Senator from Rhode Island in asking unanimous consent to set this amendment temporarily aside until the next amendment on the calendar is disposed of.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2122

(Purpose: To encourage Physicians' and Surgeons' Mutual Protection and Interindemnity Arrangements or Associations)

Mr. MATSUNAGA. Mr. President, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Hawaii (Mr. MATSUNAGA), for himself, Mr. INOUYE, Mr. CRANSTON, Mr. WILSON, and Mr. SYMMS proposes an amendment numbered 2122.

Mr. MATSUNAGA. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment follows:

On page 1955, between lines 3 and 4, insert the following:

SUBTITLE D—MISCELLANEOUS PROVISIONS

SEC. 1031. PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS.

(a) IN GENERAL.—Section 821 (relating to mutual insurance companies), as amended by section 1024(c)(2), is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) CERTAIN PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS.—

"(1) TREATMENT OF ARRANGEMENTS OR ASSOCIATIONS.—

"(A) CAPITAL CONTRIBUTIONS.—There shall not be included in the gross income of any eligible physicians' and surgeons' mutual protection and interindemnity arrangement or association any initial payment made during any taxable year to such arrangement or association by a member joining such arrangement or association which—

"(i) does not release such member from obligations to pay current or future dues, assesements, or premiums; and

"(ii) is a condition of precedent to receiving benefits of membership.

Such initial payment shall be included in gross income for such taxable year with respect to any member of such arrangement or association who deducts such payment pursuant to paragraph (2).

"(B) RETURN OF CONTRIBUTIONS.—

"(i) IN GENERAL.—The repayment to any member of any amount of any payment excluded under subparagraph (A) shall not be treated as policyholder dividend, and is not deductible by the arrangement or association.

"(ii) SOURCE OF RETURNS.—Except in the case of the termination of a member's interest in the arrangement or association, any amount distributed to any member shall be treated as paid out of surplus in excess of amounts excluded under subparagraph (A).

"(2) DEDUCTIONS FOR MEMBERS OF ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—

"(A) PAYMENT AS TRADE OR BUSINESS EXPENSES.—To the extent not otherwise allowable under this title, any member of any eligible arrangement or association may treat any initial payment made during a taxable year to such arrangement or association as an ordinary and necessary expense incurred in connection with a trade or business for purposes of the deduction allowable under section 162, to the extent such payment does not exceed the amount which would be payable to an independent insurance company for similar annual insurance coverage (as determined by the Secretary), and further reduced by any annual dues, assessments, or premiums paid during such taxable year. Such deduction shall not be allowable as to any initial payment made to an eligible arrangement or association by any person who is a member of any other eligible arrangement or association on or after the effective date of the Tax Reform Act of 1986. Any excess amount not allowed as a deduction for the taxable year in which such payment was made pursuant to the limitation contained in the first sentence of this subparagraph shall, subject to such limitation, be allowable as a deduction in any of the 5 succeeding taxable years, in order of time, to the extent not previously allowed as a deduction under this sentence.

"(B) REFUNDS OF INITIAL PAYMENTS.—Any amount attributable to any initial payment to such arrangement or association described in paragraph (1) which is later refunded for any reason shall be included in the gross income of the recipient in the taxable year received, to the extent a deduction for such payment was allowed. Any amount refunded in excess of such payment shall be included in gross income except to the extent otherwise excluded from income by this title.

"(3) ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—The terms 'eligible physicians' and surgeons 'mutual protection and interindemnity arrangement or association' and 'eligible arrangement or association' mean and are limited to any mutual protection and interindemnity arrangement or association that provides only medical malpractice liability protection for its members or medical malpractice liability protection in conjunction with protection against other liability claims incurred in the course of, or related to, the professional practice of a physician or surgeon and which—

"(A) was operative and was providing such protection, or had received a permit for the offer and sale of memberships, under the laws of any State prior to January 1, 1984,

"(B) is not subject to regulation by any State insurance department,

"(C) has a right to make unlimited assessments against all members to cover current claims and losses, and

"(D) is not a member of, nor subject to protection by, any insurance guaranty plan or association of any State."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made to and receipts of physicians' and surgeons' mutual protection and interindemnity arrangements or associations, and refunds of payments by such arrangements or associations, after the date of the enactment of this Act, in taxable years ending after such date.

Mr. MATSUNAGA. Mr. President, I rise to offer a narrow, noncontroversial and revenue neutral amendment to encourage the growth and continued development of physicians' and surgeons' mutual protection associations. These associations are comprised of doctors who insure themselves in order to overcome the high costs and unavailability of medical malpractice insurance protection.

My amendment, which is cosponsored by a bipartisan group consisting of Senators INOUYE of Hawaii, CRANSTON and WILSON of California, and SYMMS of Idaho, would reorder the tax treatment of member contributions in accordance with a mechanism negotiated with the Department of the Treasury in 1984. This reordering would encourage expanded membership in these pooled insurance funds. Expanded membership would provide lower cost malpractice insurance to these professionals which would create the following advantages to all Americans during the present liability insurance crisis:

First, it would reduce the pressure to raise medical fees; second, it would encourage a greater number of physicians to establish and retain existing competitive private practices; third, it would allow physicians to purchase sufficient amounts of malpractice protection; and fourth, it would encourage physicians to monitor the quality

of medical care provided by members of their associations since they have a direct and personal stake in successful malpractice claims.

Mr. President, while recognizing the need for the system, many physicians have been reluctant to join the medical malpractice insurance pools because policyholders are required to make a substantial initial payment of capital, upon joining an association, in addition to paying the annual premium. This initial payment is required because the associations are self-insured and must, therefore, create a funding reserve sufficiently large to cover the actual risks of the associations' members.

Under current law, only premiums paid for physician malpractice insurance are deductible in the year they are paid or incurred. The premiums for commercial insurance tend to be substantially larger than premiums payable to the association, and the deductions of those premium payments to commercial insurers are larger. No deduction is allowed, however, for a contribution to the capital of the association. These capital contributions are arguably also taxable as income to the association in the year received or accrued.

To encourage membership in these associations and to provide tax treatment which is balanced and comparable to the treatment of commercial mutual insurers, a solution was negotiated with the Department of the Treasury and the predominant commercial malpractice insurers. This solution, which is embodied in the amendment, matches the recognition of income in the same year that a deduction is taken and is completely revenue neutral. Revenue neutrality is accomplished by limiting the deductions allowed the physicians on their initial capital contributions made to the association. Those deductions can be no greater than those available for premium payments to commercial insurers for comparable coverage—deductions which are already being taken.

In fact, the provisions of the amendment should actually increase revenues after the first several years, since subsequent deductions for the payment of assessments to the self-insurer will, on the average, be 40 percent less than comparable commercial insurance premiums.

By way of background, Mr. President, the amendment was passed by this body last year as part of the Deficit Reduction Act of 1984. It was, however, dropped in conference with the House for reasons unrelated to the merits of the proposal.

The amendment proposes the following changes in the Internal Revenue Code of 1954:

First, the gross income of such associations would not include any payment made by a member of a qualified capital contribution upon joining the association.

Second, a member would be permitted a deduction for his qualified capital contribution to the association as an expense incurred in a trade or business. That annual deduction would be allowed only to the extent of the amount which would be payable to an independent insurance company for similar coverage. That amount would be reduced further by any annual dues to the association or premiums paid during that taxable year. Any excess payments not allowed as a deduction in the year paid could be carried forward and deducted in any of the taxpayer's 5 succeeding taxable years.

Third, the exclusion from the association's gross income would not apply to the extent the member deducts his contribution to capital as a trade or business expense. That income would be taxable to the association.

Fourth, the amount of the capital contribution refunded to a member if he terminates membership in the association would be included in the member's gross income when received to the extent a prior deduction was obtained for the contribution.

Fifth, these rules would apply only to existing associations which provided medical malpractice liability protection prior to January 1984.

Sixth, the provision would apply to payments made to, and receipts of, mutual protection associations made after the date of enactment.

Mr. President, as a result of the escalation of jury awards in medical malpractice litigation, the cost of medical malpractice insurance coverage has skyrocketed. One sensible and constructive response to the crises caused by this cost escalation has been the adoption of special State insurance laws permitting the establishment of doctor-controlled mutual protection organizations to reduce risks and to lower the cost of malpractice protection. I encourage my colleagues, as they did in 1984, to take the lead in promoting this sensible reform by adopting this amendment.

Mr. President, this amendment has been discussed with the floor managers on both sides and with the joint committee and with Treasury. There are no objections to the amendment.

Mr. WILSON. Mr. President, I rise to commend and support my friend from Hawaii. The amendment he is offering will be of help not only to physicians in his State but to those in mine and elsewhere throughout the Nation where physicians are facing a real crisis in terms of their ability to find liability insurance. The inevitable consequence of that crisis, if left unaddressed, is a real problem for their patients and a problem for them in providing medical care at costs that are affordable.

What the Senator from Hawaii has offered here in terms of the possibility of self-insurance is, I think, very much the answer. I commend him and I see no reason not to afford this opportunity to physicians.

This amendment has been tightly crafted so it is not possible for it to become a shelter. I think the Senator is very much on the right track. I join him in urging its adoption.

I thank the Chair.

The PRESIDING OFFICER. Is there further debate?

Mr. FORD. Mr President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1930

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the quorum call be suspended.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2121

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the pending Matsunaga amendment be temporarily laid aside in order that we might take up the Metzenbaum amendment.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The question recurs on the Metzenbaum amendment.

Mr. METZENBAUM. Mr. President, we have now been informed that the amendment that I offered has been cleared with the ranking minority member. I think it is cleared also with the manager of the bill. It is my understanding that the Senator from Rhode Island, who is the original proponent of the language in the measure, is prepared to speak to the subject, and I yield to him.

Mr. CHAFEE. Mr. President, the Senator from Ohio is correct, and I am prepared to accept the amendment proposed by the Senator from Ohio. I would ask passage now.

The PRESIDING OFFICER. Is there further debate? If there is no further debate. the question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 2121) was agreed to.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that further proceedings under the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, let me urge my colleagues who may not be on the floor but within their offices that the managers of the bill are very pleased to do business. We are trying to avoid rollcalls for convenience of our Members. What we are doing now, we have the staff putting together the total list of amendments, and that ought to be ready momentarily, but in the meantime we hope that Members would come to the floor, particularly with those amendments that have been designated as "probably can be worked out" by the managers. So I would urge my colleagues to help us bring this to a close. I understand there is an amendment about to be offered and I thank my colleagues. In the meantime I suggest the absence of a quorum.

Mr. BUMPERS. Will the majority leader withhold for just a moment?

Mr. DOLE. Yes.

Mr. BUMPERS. Did I understand the majority leader to say he is trying to leave a window here for Members, not to take rollcalls for the next little bit?

Mr. DOLE. Yes.

Mr. BUMPERS. Is it the majority leader's intention to later in the evening possibly take two or three rollcall amendments?

Mr. DOLE. Maybe one.

Mr. BUMPERS. Does the majority leader have one in mind?

Mr. DOLE. No. Any one that comes up.

Mr. BUMPERS. I thank the leader.

AMENDMENT NO. 2122

Mr. MATSUNAGA addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. MATSUNAGA. I ask for a vote on the amendment pending, which I offered.

The PRESIDING OFFICER. Is there further debate on the pending amendment? If not, the question is on agreeing to the amendment of the Senator from Hawaii.

The amendment (No. 2122) was agreed to.

Mr. MATSUNAGA. I move to reconsider the vote by which the amendment was agreed to.

I move to lay the motion on the table.

The motion to lay on the table was agreed to.

Mr. MATSUNAGA. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 1940

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2108

(Purpose: To provide that certain expenses of a private foundation in removing hazardous substances shall be treated as qualifying distributions for purposes of section 4942 of the Internal Revenue Code of 1954)

Mr. McCONNELL. Mr. President, I have an amendment at the desk on behalf of myself and my colleague from Kentucky [Mr. FORD]. It is amendment No. 2108, and I ask that it be reported.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. McCONNELL], for himself and Mr. FORD, proposes an amendment numbered 2108.

Mr. McCONNELL. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in title XVII insert the following new section:

SEC. . CERTAIN COSTS OF PRIVATE FOUNDATION IN REMOVING HAZARDOUS SUBSTANCES TREATED AS QUALIFYING DISTRIBUTIONS.

(a) IN GENERAL.—In the case of any taxable year beginning after December 31, 1982, the distributable amount of a private foundation for such taxable year for purposes of section 4942 of the Internal Revenue Code of 1954 shall be reduced by any amount paid or incurred (or set aside) by such private foundation for the investigatory costs and direct costs of removal or taking remedial action with respect to a hazardous substance released at a facility which was owned or operated by such private foundation.

(b) LIMITATIONS.—Subsection (a) shall apply only to costs—

(1) incurred with respect to hazardous substances disposed of at a facility owned or operated by the private foundation but only if—

(A) such facility was transferred to such foundation by bequest before December 11, 1980, and

(B) the active operation of such facility by such foundation was terminated before December 12, 1980, and

(2) which were not incurred pursuant to a pending order issued to the private foundation unilaterally by the President or the President's assignee under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, or pursuant to a judgment against the private foundation issued in a governmental cost recovery action under section 107 of such Act.

(c) HAZARDOUS SUBSTANCE.—For purposes of this section, the term "hazardous substance" has the meaning given such term by section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act.

Mr. McCONNELL. Mr. President, the amendment I am offering today is identical to the one I offered with Senator FORD last September to the Superfund reauthorization bill. It was adopted by unanimous consent on September 20, 1985. The amendment will encourage the voluntary cleanup of a hazardous waste site by the Louisville-based Brown Foundation, while also ensuring that the foundation can continue its generous charitable contributions over the longterm. I am offering the amendment again today given the delay in seeking a resolution of the differences between the House and Senate Superfund bills and recognizing the foundations' needs for certainty in its long-range planning for charitable disbursements.

The James Graham Brown Foundation is a tax-exempt, nonprofit corporation which has donated in excess of $68 million to charitable causes since 1954. In 1969, the founder bequeathed the foundation a wood preserving company which included three operating plants in Live Oak, FL; Brownsville, AL; and Louisville, KY. All of the assets of the plants were liquidated between 1969–80.

In 1983, the foundation was advised by EPA that prior operations at the Live Oak, FL; plant may have resulted in the discharge of hazardous substances, specifically the creosote used in preserving the wood. Following notification, the foundation entered into a voluntary consent order with EPA and the State of Florida to investigate the extent of the pollution and possible cleanup actions at the Live Oak plant. In addition, the foundation voluntarily began investigations of potential pollution at the two other sites located in Alabama and Kentucky. The studies are still underway and the foundation anticipates that it will pay its fair share of any necessary cleanup activities.

At this time actual cleanup costs at the three plants are not known; but, based on EPA's prior experience, I understand the costs could be in the range of $20 to $100 million. By comparison, the assets of the foundation are in the range of $135 to $150 million. While it is the intention of the foundation to fulfill its responsibilities for cleanup, its assets must be preserved so that it can continue its many other charitable activities.

The problem, Mr. President, arises from the fact that section 4942 of the Internal Revenue Code requires the foundation to annually disburse charitable payments which are qualifying distributions equivalent to at least 5 percent of the fair market value of its assets. For the past few years, this has resulted in a requirement of $6 to $8 million in disbursements each year. The combination of this requirement and the potentially substantial clean-

up costs could result in the foundation seriously depleting its corpus. This would not only threaten the foundation's ability to support worthy charitable activities in Kentucky and seven other States, but would also threaten the very existence of the foundation.

In order to prevent this dire possibility, our amendment provides that the cleanup expenditures sustained by the foundation will constitute charitable payments for the purposes of the qualifying distribution requirements of section 4942 of the IRC. Its voluntary cleanup expenditures are consistent with other charitable contributions because they provide for the general welfare, lessen the need for Government action and funding and provides for the maintenance of public works. Several points are relevant to this amendment:

It cannot be used by an entity to avoid Superfund obligations—it is narrowly drafted to the factual situation and unique problem confronted by this particular foundation which will not recur.

Unlike a for-profit corporation, the foundation cannot benefit from deducting cleanup costs as business expenses.

It results in no loss of tax revenues to the U.S. Government. In fact, it encourages the voluntary cleanup being taken by the foundation and thereby saves the Government substantial Superfund expenditures and related administrative and legal costs. Furthermore, the foundation's voluntary actions will result in cleanup activity being accomplished more quickly and effectively than could be done by the Government.

Without this amendment, Mr. President, the foundation could be forced to sell assets in order to cover its cleanup costs and, in addition, still meet the IRS charitable disbursement requirements. This untimely forced sale will result in failure to recover the true value of these assets and will substantially reduce the income which would be available for future charitable gifts. The foundation has been an exemplary citizen in its voluntary approach to fulfilling its responsibilities. Neither it nor the charities which benefit from its generous giving should be punished by an inconsistent application of our Federal laws, and I urge adoption of the amendment.

Mr. President, this is a narrowly-drafted amendment and encourages voluntary cleanup at no cost to the Government, with regard to a charitable foundation. The amendment has been cleared on both sides of the aisle, and it is my understanding that there is no objection.

Mr. FORD. Mr. President, I join my colleague in offering this amendment. This is an outstanding foundation, and adoption of the amendment would give them an opportunity to do what should be done, without cost to the Federal Government.

I urge the Senate to adopt the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2108) was agreed to.

Mr. McCONNELL. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2123

Mr. STEVENS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS] for himself and Mr. DIXON, Mr. SIMON, and Mr. MURKOWSKI, proposes an amendment numbered 2123.

Mr. STEVENS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1664, between lines 8 and 9, insert the following:

Subtitle H—Certain Diesel Fuel Taxes May Be Imposed on Sales to Retailers

SEC. 571. TAX ON SALES TO RETAILER.

(a) IN GENERAL.—Section 4041 (relating to imposition of tax on special fuels) is amended by adding at the end thereof the following new subsection:

"(n) TAX ON DIESEL FUEL FOR HIGHWAY VEHICLE USE MAY BE IMPOSED ON SALE TO RETAILER.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—The tax imposed by subsection (a)(1)—

"(A) shall apply to the sale of diesel fuel to a qualified retailer (and such sale shall be treated as described in subsection (a)(1)(A)), and

"(B) shall not apply to the sale of diesel fuel by such retailer if tax was imposed on such fuel under subparagraph (A).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED RETAILER.—The term 'qualified retailer' means any retailer—

"(i) who elects (under such terms and conditions as may be prescribed by the Secretary) to have paragraph (1) apply to all sales of diesel fuel to such retailer, and

"(ii) who agrees to provide a written notice to each person who sells diesel fuel to such retailer that paragraph (1) applies to all sales of diesel fuel by such person to such retailer.

Such election and notice shall be effective for such period or periods as may be prescribed by the Secretary.

"(B) RETAILER.—The term 'retailer' means any person who sells diesel fuel for use as a fuel in a diesel-powered highway vehicle. Such term does not include any person who sells diesel fuel primarily for resale.

"(C) DIESEL FUEL.—

"(i) IN GENERAL.—The term 'diesel fuel' means any liquid on which tax would be imposed by subsection (a)(1) if sold to a person, and for a use, described in subsection (a)(1)(A).

"(ii) EXCEPTION.—A liquid shall not be treated as diesel fuel for purposes of this subsection if the retailer certifies in writing to the seller of such liquid that such liquid will not be sold for use as a fuel in a dieselpowered highway vehicle.

"(3) FAILURE TO NOTIFY SELLER.—

"(A) IN GENERAL.—If a qualified retailer fails to provide the notice described in paragraph (2)(A)(ii) to any seller of diesel fuel to such retailer—

"(i) paragraph (1) shall not apply to sales of diesel fuel by such seller to such retailer during the period for which such failure continues, and

"(ii) any diesel fuel sold by such seller to such retailer during such period shall be treated as sold by retailer (in a sale described in subsection (a)(1)(A)) on the date such fuel was sold to such retailer.

"(B) PENALTY.—For penalty for failing to notify seller, see section 6652(j).

"(4) EXEMPTIONS NOT TO APPLY.—

"(A) IN GENERAL.—No exemption from the tax imposed by subsection (a)(1) shall apply to a sale to which paragraph (1) or (3)(A) of this subsection applies.

"(B) CROSS REFERENCE.—

"For provisions allowing a credit or refund for certain sales and uses of fuel, see sections 6416 and 6427."

(b) PENALTY.—Section 6652 (relating to failure to file certain information returns, registration statements, etc.), as amended by section 501, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) FAILURE TO GIVE WRITTEN NOTICE TO CERTAIN SELLERS OF DIESEL FUEL.—

"(1) IN GENERAL.—If any qualified retailer fails to provide the notice described in section 4041(n)(2)(A)(ii) to any seller of diesel fuel to such retailer, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by such retailer with respect to each sale of diesel fuel to such retailer by such seller to which section 4041(n)(1) applies an amount equal to 5 percent of the tax which would have been imposed by section 4041(a)(1) on such sale had section 4041(n)(1) applied to such sale.

"(2) DEFINITIONS.—For purposes of paragraph (1), the terms 'qualified retailer' and 'diesel fuel' have the respective meanings given such terms by section 4041(n)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after the first calendar quarter beginning more than 60 days after the date of the enactment of this Act.

At the appropriate place, add the following new section as follows:

"SECTION . SPECIAL ESOP REQUIREMENTS.—

"(a) IN GENERAL.—Subsection (a) of Section 401(a)(29) of the Internal Revenue Code of 1954 (relating to qualified pension, profit sharing and stock bonus plans) is amended by inserting at thereof the following new sentence: The requirements of subsection (e) of section 409 shall not apply to defined contribution plans established by an employer whose stock is not publicly traded and who publishes a newspaper."

(b) Section 409(1) of the Internal Revenue Code of 1954 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) NONVOTING COMMON STOCK MAY BE ACQUIRED IN CERTAIN CASES.—Nonvoting common stock of an employer whose stock is not publicly traded and who publicly shall be treated as employer securities if an employer has a class of nonvoting common stock outstanding and the specific shares that the plan acquires have been issued and outstanding for at least 24 months."

(c) EFFECTIVE DATES.—The amendment make by subsection (a) shall be effective December 31, 1986. The amendment made by subsection (b) shall apply to acquisitions of securities after December 31, 1986."

Mr. STEVENS. Mr. President, this is one of the amendments I have asked to reserve the right to offer. It is offered by me together with Senator DIXON, Senator SIMON, and Senator MURKOWSKI.

It deals with the subject of ESOP's and the passthrough of voting rights.

In 1981, by a vote of 94 to 3, we adopted the same type of amendment, generically, as an amendment to the Economic Recovery Act.

□ 1950

That provision was dropped in conference.

Since then there has been a lot more discussion of the passthrough requirement, and I think that its effects are widely known.

Without this amendment, what happens is that local businesses where the employers are really anxious to pass on to their employees ownership of a small entity are not able to maintain control of their company during their lifetime and the passthrough amendment is necessary in order to permit the employer to continue to have control and yet through the generosity of the ESOP concept establish the employees as the successors to the company.

That, Mr. President, prevents those local personally held type corporations from being bought up by chains, and I think it is a good thing to assure that these companies can be locally owned and wholly controlled and to encourage employers to use the ESOP mechanism to pass on to the employees the benefits of the overall ESOP Program.

I am not sure how many Members of the Senate are really aware of the total work that the Senator from Louisiana [Mr. LONG] has done in this area of ESOP's. But he has become a legend in his own time in my State because there are a considerable number of ESOP's that have been established in our State. One in particular is a small family-owned newspaper owned by a very good friend of mine. It is in Fairbanks. It is the Fairbanks Daily News Monitor.

The amendment that is before the Senate now is different from that which was offered in 1981 because it is my understanding that the Senator from Ohio has objected to the broad version of the prior amendment, and Senator from Illinois has urged me in the interest of time to deal with the problem that is a great problem, the newspaper problem.

This amendment applies to all newspapers similarly situated in the United States. It is not covering a newspaper in Illinois and one in Alaska. It deals with the ESOP questions and voting right passthrough for all newspapers provided they are not held by corporations that are publicly traded.

I think under these circumstances, and I am talking about the circumstances of this bill before the Senate, not the circumstances economically, but the circumstances that we face, it is probably better to get the amendment adopted and cover the area that we know that is a real difficult area in the ESOP application passthrough voting rights and deal with the overall question again later.

It would be my intent to do so. I hope that there is no misunderstanding about that.

I do think that we ought to quote from Senator LONG's comments following the passage of my amendment in 1978. He said again when it was passed in 1981. I quote from his statement at that time. He said:

Last year as part of the Revenue Act of 1978 Congress provided for the passthrough to plan participants the voting rights in certain situations, closely held employer's stock held in profit-sharing plans, stock bonus plans, money purchase plans, and employee stock ownership plans (ESOPs).

This is a very ill-advised decision. We held no hearings on this question and did not give the business community any opportunity to advise Congress on how they perceived the issue. In fact, only the Treasury Department actually demanded the passthrough of these voting rights. This winter I, and most other Members of Congress, received letters from other constituents that all opposed this position to the Revenue Act of 1978. I would estimate that perhaps as many as 300 letters and telegrams have reached me recently.

Since that time, we have tried to change that provision and that is what this amendment would do. It would amend the amendment of the Revenue Act of 1978 and alleviate the problems created by that passthrough amendment.

I am hopeful that the Senate will adopt it. I want to explain the first part of the amendment. Due to the problem of dealing with the revenue raising provisions staff has advised me we now are told that the loss of this amendment is less than $5 million. There is a provision in the House bill that is not in the Senate bill. It provides the collection of diesel fuel excise tax. It raises $5 million during the fiscal years 1986 to 1991, and we have included that provision which is in the House bill as the revenue offsetting mechanism for the amendment that the Senator from Illinois and the Senator from Alaska have offered.

I ask unanimous consent that there be printed in the RECORD at this point the comments from the House bill explaining the $5 million that was raised by the diesel fuel excise tax which is the beginning portion of this amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

RAISES $5 MILLION DURING FISCAL YEARS 1986–1991

I. COLLECTION OF DIESEL FUEL EXCISE TAX (SEC. 1351 OF THE BILL AND SECS. 4041 AND 6652 OF THE CODE

Present law

An excise tax of 15 cents per gallon is imposed on the sale of diesel fuel for use in a diesel-powered highway vehicle (sec. 4041(a)(1)). The tax is imposed and collected at the retail level, and is scheduled to expire after September 30, 1988. Revenues from this tax are deposited in the Highway Trust Fund.

The excise tax (9 cents per gallon) on gasoline for highway vehicle use is imposed and collected at the manufacturer's level (sec. 4081).

Reasons for change

Since there are many more retail outlets for diesel fuel sales than diesel fuel wholesalers, the committee concluded that allowing the tax to be imposed and collected by the wholesaler (or manufacturer for direct sales) upon the sale to the retailer will reduce the tax administrative burden on the numerous retail diesel fuel outlets and reduce the tax collection and enforcement costs to the Internal Revenue Service. Consequently, fewer taxpayers will be involved in filing excise tax returns.

Explanation of provision

The bill provides that the excise tax on diesel fuel for highway vehicles may be imposed on the sale to the retailer by the wholesaler (jobber) or by the manufacturer where the sale is direct to the retailer.

This applies to the sale of diesel fuel to a "qualified retailer," defined as any retailer who (1) elects to have this provision apply with respect to all sales of diesel fuel to such retailer and (2) agrees to provide a written notice to whoever sells diesel fuel to such retailer that such an election has been made concerning application of the diesel fuel tax.

If a retailer required to notify the seller of diesel fuel fails to do so, the retailer is then liable for payment of the tax for the period for which the failure continues. Failure to provide the required written notice to the diesel fuel seller, unless shown to be due to reasonable cause and not to willful neglect, will result also in a penalty. This penalty is to be paid by the retailer with respect to each sale of diesel fuel to the retailer and is equal to 5 percent of the excise tax amount involved.

Effective date

The provision applies to sales of diesel fuel (for use in highway vehicles) after the first calendar quarter beginning more than 60 days after the date of enactment.

Revenue effect

This provision will increase net fiscal budget receipts by $5 million in 1986, and by negligible amounts each year thereafter.

Mr. STEVENS. Again, I thank my good friend from Illinois for working

with me on this matter, and I thank our good friend from Louisiana for all the work that he has done over the years to make this concept one that is a viable one and one that means so much to the people in the small areas such as many of the small communities of my State.

Mr. DIXON. Mr. President, I express my personal appreciation to my warm friend, the senior Senator from Alaska, for his cooperation over a period of several years in our attempt to accomplish the purposes that are being accomplished by this amendment tonight.

I express my profound appreciation to the father of the ESOP concept, the distinguished senior Senator from Louisiana, Senator LONG, for his help over the years on this and his continuing advice.

I thank the Senator from Ohio, Senator METZENBAUM, and the manager of the bill, and the majority leader for their cooperation in helping us to craft an amendment on a narrow basis that takes care of closely held newspapers owned by families who want to pass along stock to their employees without giving up control of their newspapers.

This is, as my distinguished friend from Alaska suggested, revenue neutral by virtue of the adoption of a revenue provision concerning the collection of petroleum taxes that is in the House bill agreed to by the industry. There is no controversy at all about it. There is a $5-million gain to the general revenue fund by virtue of the passage of this amendment.

I do express, Mr. President, to everyone concerned on behalf of the newspaper in my State beneficially affected, my profound appreciation for their cooperation.

Mr. President, this amendment is based on legislation that my distinguished colleagues, Senators STEVENS and LONG, and I introduced last year—S. 628. It is designed to help remove obstacles to the formation of employee stock ownership plans by certain closely held corporations.

The obstacle was created by the Revenue Act of 1978. It required passthrough voting on major corporate issues by any defined contribution plan—whether an ESOP or a profit sharing plan—which acquired employer stock after 1979. The requirement affects only closely held companies; publicly traded companies must pass through the vote on all issues.

The provision was adopted without hearings, based on a Treasury Department recommendation. No one, including business, labor, or the ESOP community, had an opportunity to comment or recommend changes to the provision.

The 1978 law resulted in severe problems for many small closely-held, family-owned businesses that want to share ownership with their employees. The voting stock and voting rights passthrough requirements can, in cases where there is high employee turnover, cause such a broad dispersal of stock among former employees that a small or family-owned business may become publicly owned against the will of those who formed it.

The voting rights requirement may cause additional special problems for closely held companies, as the example of a small publishing company in my home State of Illinois will illustrate. This company has outstanding voting and nonvoting stock. Its corporate treasury contains shares of nonvoting stock which would be available for the formation of an ESOP but for the voting rights and voting passthrough requirements of current law.

However, this company is unable to issue any new voting stock, either for ESOP formation or for any other purposes, because of an agreement made at the insistence of some of its creditors. Thus, the company is effectively prevented from forming a tax-qualified ESOP because current law conflicts with the company's need to satisfy its lenders' requirements.

Closely held companies such as this one can be made subject to restrictions against the issuance of new voting stock. Such stipulations are frequently made by lenders to small business who want to ensure that control of the corporation will remain in the hands of those who control it at the time the agreement to extend credit is made. Alternatively, the corporation may wish to obtain additional financing through the issuance of voting stock to limited numbers of new stockholders. These new stockholders, in order to be assured that their share of control in the company will not be diluted, may condition their purchase of stock on an agreement that the company issue no new voting stock thereafter.

In either situation, Mr. President, the company, in order to obtain needed financing through debt or issuing new stock, must respond to the demands of lenders or prospective shareholders. Obviously, in such cases the corporation is effectively prevented from forming tax-qualified ESOP's by the need for an infusion of capital. In a period of high interest rates, such a situation imposes especially severe burdens on closely held businesses.

In essence, the voting passthrough and voting stock requirements applicable to ESOP's under current law prevent many small business owners from offering their employees a share in the growth of their companies. Not surprisingly, business groups indicate a sharp decline of interest in ESOP's among closely held companies since those requirements were imposed in 1978. The express intent of Congress to avoid unduly burdensome requirements for closely held companies has, in practice, been frustrated.

In 1981, the Senate attempted at least a partial remedy of this situation. By a vote of 94 to 3, we adopted an amendment offered by Senator STEVENS which would have repealed the voting passthrough requirement for closely held companies. Unfortunately, this amendment was dropped in the conference with the House of Representatives.

Mr. President, this amendment makes no changes in ESOP requirements as they apply to publicly traded companies and its application to closely held companies is more limited than I would prefer. However, it does provide a test of this important change.

In its current forms it repeals the current voting passthrough requirement as it applies to a limited class of closely held companies and permits the use of nonvoting stock.

There is nothing intrinsically wrong with stock that lacks voting power, so long as that fact is reflected in the valuation of the stock. Moreover, as I stated earlier, there are many cases in which such nonvoting stock is the only stock available for acquisition by the ESOP.

Further, the main Treasury rationale was that the voting requirement would have a positive impact on employee productivity. A 1981 survey of 228 ESOP companies by the Journal of Corporation Law at the University of Iowa, however, concluded just the opposite. It found that "the survey results do not reveal a relationship between voting rights and improved productivity; therefore, the new voting rights requirements may, unjustifiably, compel changes in existing ESOP's and serve as a deterrent for companies that are considering the adoptions of an ESOP."

The amendment is designed to prevent manipulation and abuse by requiring that nonvoting stock must have been issued and outstanding at least 24 months before the ESOP will be able to own it. This requirement, coupled with the extensive requirements relating to fair valuation in the Internal Revenue Code and ERISA, should provide more than adequate protection for all employees of these few eligible companies.

Mr. President, I believe this is a reasonable measure. I urge my colleagues to support this modest but important amendment.

Mr. President, the ESOP changes Senator STEVENS and I have proposed are financed by a modest change in the diesel fuel tax collection, currently the collection of diesel fuel excise tax occurs at the retail level. I propose to allow the imposition of the diesel fuel excise tax on the wholesaler level.

This limited amendment is voluntary for retailers. The retailer is the

one who will decide whether or not to apply this provision to all sales of diesel fuel. He will not be forced to switch from his present form of tax collection.

The retailers are presently carrying the burden of tax collection. Because there are a much larger number of diesel retail outlets than wholesalers, the administrative process is complicated.

By incorporating this provision, administrative complexity will be decreased. Not only will fewer taxpayers be involved in filing tax returns, but the tax collection and enforcement costs to the IRS will be reduced.

Furthermore, adopting this provision will result in a $5 million increase in the net fiscal year budget in 1986. Increases will continue each consecutive year.

This amendment was drafted by the IRS for inclusion in the House bill. The service believed the issue could be handled by regulation, but has never done so. It is time for the Senate to move in and adopt this amendment that would permit the tax to be imposed and collected by the wholesaler.

This is a reasonable amendment. It is in the House bill. It is supported by petroleum marketers and wholesalers and was not opposed in the House by the IRS. I urge its adoption.

I thank the Chair and yield back the remainder of my time.

Mr. BRADLEY. Mr. President, the record of the senior Senator from Louisiana, Senator LONG, is filled with many distinguished accomplishments. None has possibly touched the lives and welfare of working Americans more than his leadership in fostering industrial democracy. In championing employee stock option programs, commonly known as ESOP's, Senator LONG has provided a unique opportunity for workers and their employers to join cooperatively to conserve jobs.

Traditionally, a company faced with insolvency would have no choice but to declare bankruptcy or curtail its operations, throwing its employees out of work, out of medical coverage, out of pension plan coverage. Senator LONG recognized many years ago the turmoil that this industrial strife was causing for workers and their families. He found a number of situations in which workers were willing—and anxious—to participate in saving their companies and their jobs.

Out of this came an idea that workers should be encouraged to become owners and managers of their workplace, rather than merely employees. This philosophy not only meets the economic needs of troubled companies, but it provides the mechanism for achieving a more efficient workplace and more constructive and democratic labor-management relationship. Giving workers a stake in the success of their companies provides a unique opportunity for working people to cope with industrial change and competitive disadvantages. In a period of rapid industrial change and intense international competition, such as we are experiencing today, ESOP's offer a practical solution for many troubled companies.

Senator LONG is to be congratulated for his steadfast leadership in fostering participatory democracy in the industrial workplace.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment of the Senator from Alaska.

The amendment (No. 2123) was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. DOLE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2124

Mr. SASSER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. SASSER] proposes an amendment numbered 2124.

Mr. SASSER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in title V insert the following new section:

SEC. . APPLICATION OF THE REGULATORY FLEXIBILITY ACT TC THE INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Section 7805 of the Internal Revenue Code of 1954 (relating to rules and regulations) is amended by adding at the end thereof the following new subsection:

"(e) RULE MAKING.—The provisions of secton 553 of title 5, United States Code (without regard to the exception for interpretative rules) shall apply to all rules and regulations prescribed by the Secretary under this section or any other provision of this title."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any rule or regulation prescribed after the date of the enactment of this Act.

Mr. SASSER. Mr. President, the amendment I offer today is rather simple. My amendment seeks to lessen the regulatory burden placed on small business by the Internal Revenue Service. Those interested in lessening the regulatory burden on small business will be attracted to this amendment. Those of my colleagues interested in making our tax system simpler for small business will be interested in this amendment.

The amendment that I am offering achieves these goals by extending coverage of the Regulatory Flexibility Act to regulations issued by the Internal Revenue Service. As my colleagues will recall, this important act was passed 5 years ago. The fundamental goal of the Regulatory Flexibility Act is to ensure that Federal regulation is imposed on small businesses only to the degree necessary to meet the real goals of the legislation under which the regulations are promulgated.

I think we all know that regulations issued by the IRS have an enormous impact on small business. Indeed, I would wager that of all Federal agencies, the IRS has the greatest impact on the day-to-day operations of a small business. Unfortunately, the IRS has avoided compliance with the Regulatory Flexibility Act by arguing that IRS regulations are generally interpretive, and as such exempt from the act's coverage.

Well, I think the unfortunate results of the IRS's policy on this act are easily seen. My colleagues will recall the regulatory nightmare surrounding the automobile recordkeeping rules; the fire storm of protest and indignation that this occasioned in the small business community all across the length and breadth of this Nation. When issuing rules to implement this statutory mandate, the IRS did not determine what impact these rules and regulations would have on small business, the resulting chaos and consternation among small business owners could have been predicted. Had the IRS used the tools of the Regulatory Flexibility Act, we may have avoided that particular case of excess government regulation.

This is but one example of excessive regulatory burdens placed on small business which might have been avoided. Other cases include rules determining which business establishments were subject to new tip income reporting and withholding; rules relating to the eligibility and amounts for the targeted jobs tax credit; regulations relating to pension plans and profit-sharing. The list goes on and on.

And make no mistake about it, in the wake of this massive tax reform bill, we are likely to see a virtual avalanche of regulations flowing from the Internal Revenue Service impacting on small business.

So clearly, it is time to end the often arbitrary distinction between interpretive and legislative and to bring some regulatory relief to small business.

Before going any further, let me answer the question that I suspect some of my colleagues might be asking themselves; What is the cost of this amendment? Well, I am pleased to announce that this amendment is revenue neutral. It does not affect revenues at all. It deals solely with the administrative practices of the Internal Revenue Service.

In fact, Mr. President, those of our colleagues who have steadfastly clung to the worthy tax reform principles, embodied in the Finance Committee's proposal, should be attracted to this amendment.

Extending the Regulatory Flexibility Act to the Internal Revenue Service has been a top priority for small business for many years. They view this act as a means of simplifying their taxes. Now if that is not the very essense of true tax reform, then I do not know what is. A simplified tax system is what many in our small business community are looking for in this tax reform bill.

The chief counsel for the Small Business Administration's Office of Advocacy, Mr. Frank Swain, has repeatedly called for an extension of the Regulatory Flexibility Act's provisions to the Internal Revenue Service.

Several of the small business organizations have worked for years to extend the Regulatory Flexibility Act to the IRS. As far back as 1982, for example, the National Federation of Independent Business appeared before the Senate Judiciary Committee urging IRS compliance with the Regulatory Flexibility Act. The National Federation of Independent Business has been joined by the National Small Business Association, Small Business United, the Small Business Legislative Council, and other groups in this effort. These groups are working hard in support of my amendment. And I submit their message is crystal clear. By requiring the Internal Revenue Service to comply with the Regulatory Flexibility Act, the Senate will ensure that the promise of tax reform will be kept for the millions of small business owners who have supported tax reform.

I would also point out, Mr. President, that this proposal has a lengthy legislative history. The proposal has been discussed before the Senate Finance, Judiciary, and Small Business committees and the House Ways and Means and Small Business Committee. In this session of Congress, legislation introduced by the ranking member of the Small Business Committee, Senator BUMPERS and by my good friend from Montana, Senator BAUCUS as well as my own legislation contain this proposal. Moreover, several of the State White House Conferences on Small Business have called for extending the Regulatory Flexibility Act to the IRS. I anticipate this will be a major topic of discussion at the White House Conference later this year.

Some of my colleagues will protest that this amendment would simply put too great a burden on the Internal Revenue Service. Well, I do not buy that argument at all. Other Federal agencies with heavy regulatory workloads are finding that compliance with this act is relatively painless, and they also find that it brings great goodwill among the small business community for their agencies.

The Environmental Protection Agency, for example, has made enormous strides in complying with this act. In the words of Mr. Frank Swain, the Environmental Protection Agency is "A lead agency in the implementation of the Regulatory Flexibility Act."

Now I would submit that if an agency such as the Environmental Protection Agency, with its complex rules and regulations, can comply with this act, I do not see why we should have any special or particular or peculiar concerns about the Internal Revenue Service. Quite frankly, the Office of Advocacy at the Small Business Administration stands ready, willing and able to work with the IRS in ensuring the orderly formulation of rules under this act.

So, Mr. President, I return to my initial point. This is a very simple amendment. It seeks to lessen the regulatory burden imposed on small business by the Internal Revenue Service. It is just that simple. And many small businesses across America believe that is what tax reform is all about. Quite frankly, I agree with them. The promise of tax reform is a promise of a simpler tax system. My amendment is an important step in fulfilling that promise for our small business community. So I urge my colleagues here this evening to join me in keeping the promise of a simpler tax system for America's small businesses.

(Mr. ABDNOR assumed the Chair.)

Mr. PRYOR. Mr. President, I strongly support the amendment of the Senator from Tennessee, [Mr. SASSER]. This amendment extends the provisions of the Regulatory Flexibility Act to regulations issued by the Internal Revenue Service [IRS]

Mr. President, we all know the reason for the Regulatory Flexibility Act—to ensure that Federal agencies take the needs of small businesses into account in issuing regulations. These small employers very often face lengthy and confusing regulations. They don't have the time or the manpower to interpret and adhere to these often complex rules. Therefore, under this act agencies must consider factors involving small businesses.

The problem, however, is that this act does not apply to regulations of the Internal Revenue Service. Having this act on the books, but exempting regulations of the IRS makes little sense as far as the small business community is concerned. These tax regulations are often very confusing and I've heard from many small businesses that have found themselves in violation of some rules simply because they didn't know of their existence, or the regulation was confusing.

I commend the efforts of the Senator from Tennessee and I urge the Senate to adopt this amendment. Extending this act to Treasury regulations will be very helpful to the thousands of small businesses in Arkansas and around the country.

● Mr. WEICKER. Mr. President, as chairman of the Senate Small Business Committee, I am pleased to rise in support of the amendment offered by the Senator from Tennessee. This amendment will rectify an unfortunate situation, under which the Internal Revenue Service continues to ignore the provisions of the Regulatory Flexibility Act of 1980. The congressional intent however, called for the IRS, along with every other Federal agency prior to promulgating regulations, to consider the regulatory impact of such regulations on small businesses.

Mr. President, the Regulatory Flexibility Act was intended to force departments and agencies to analyze the impact of proposed regulatory activities on small businesses, and when possible, to tailor alternative regulatory and paperwork requirements to fit the resources of small firms. While it is often the business of government to regulate companies, to the extent possible, it should be fully aware of the impact its regulations will have on those it supervises.

By its very terms, however, the act only applies to regulations on which public comment is required by the Administrative Procedure Act. Unfortunately, under the A.P.A. interpretative rules do not require notice and comment procedures, and the IRS takes the position therefore, that it falls outside the context of the act when it issues such interpretative letters, which are a mainstay of the agency. The IRS has concluded that it need not comply with the provisions of the Regulatory Flexibility Act.

Well, nothing could be further from the intent of Congress. No Federal agency has as large a regulatory impact on small business as the Internal Revenue Service. Every time the IRS issues a new regulation or a new interpretative letter, small businesses across the country are affected. And yet, if the IRS promulgates its change in procedure in the form of an interpretative letter, it can ignore the mandate of the Regulatory Flexibility Act and proceed without regard to the impact on small businesses, and without first attempting to devise simpler, or less burdensome provisions. The IRS, which can readily disrupt the planning and operation of a small business with the shortest interpretative letter, should be complying with the Regulatory Flexibility Act. That was the intent of Congress back in 1980, and it's a shame that we have to

revisit the act today to make that point crystal clear.

And so, I urge the Senate to support this amendment in order that the IRS, the agency that most affects the small business community by its various pronouncements must fully comply with the letter and spirit of the Regulatory Flexibility Act.●

● Mr. BUMPERS. Mr. President, I rise this evening to speak in support of the amendment offered by my friend from Tennessee which would apply the provisions of the Regulatory Flexibility Act of 1980 to the Internal Revenue Service. I commend Senator SASSER for offering this important piece of legislation, which would represent a significant savings, in both time and money, to small business entities nationwide. It is time the IRS is held accountable for the burdens it imposes on small business.

The Regulatory Flexibility Act [RFA] was adopted in 1980 as an amendment to the Administrative Procedures Act, and requires all Federal agencies to analyze the impact their rules and regulations will have on small business, small organizations and small governments. The purpose of the act was to ensure that regulators do not unfairly burden small entities disproportionately by imposing the same regulations—which often have onerous paperwork requirements—in the same way on all entities, large and small, without regard to size. Congress in 1980 recognized that such unnecessary and overly burdensome regulations often adversely affected competition in the marketplace and created entry barriers in many industries which discouraged small business innovation and restricted improvements in productivity.

Although the Regulatory Flexibility Act was intended to apply to all agencies which publish a general notice of proposed rulemaking pursuant to the Administrative Procedures Act, some agencies have concluded that they do not fall under the purview of the act. One such agency is the Internal Revenue Service.

The unpleasant truth, Mr. President, is that the IRS believes it is above the Regulatory Flexibility Act. Because the IRS considers the majority of its rules to be of an interpretative nature, it has determined that the regulatory flexibility requirements applicable to legislative rules should not apply to its regulations. As a result, nearly all tax regulations escape scrutiny under RFA standards, creating an extreme hardship for many small concerns. For example, last year I heard from thousands of small business in Arkansas which foresaw a terrible burden would be placed on them if the new automobile record-keeping requirements were applied uniformly to all businesses. Had the IRS gone through the procedures required by the Regulatory Flexibility Act, it would likely have seen the impractical nonsense of the auto log regulation, and this proposal might never have seen the light of day.

It is obvious to me that new IRS regulations are likely to have a disproportionate effect on small businesses and should be subject to the notice and reporting requirements of the RFA if the intent of that act is to be upheld. I believe it is time Congress acted to close this loophole in the RFA to obligate the IRS to consider alternate means of achieving its regulatory objectives, which will reduce the disparities in economic impact between large and small entities. This bill has been offered several times in the past and has always met with approval in the Senate. Unhappily, it has been bitterly opposed by the Treasury Department. I hope my colleagues will again vote for this bill so vital to small business.●

Mr. SASSER. Mr. President, does the distinguished Senator from New Jersey want to speak on this amendment?

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, let me say I have some concern about the amendment offered by the Senator from Tennessee. The amendment requires the Internal Revenue Service to perform a number of time-consuming analyses. My concern is that now the Internal Revenue Service is so backlogged that it cannot get interpretive rulings to small businesses now. Many of them are operating in the dark. I think this amendment would simply increase that backlog, increase demands on the Internal Revenue Service which is already overburdened. I think the result would be counterproductive. I do not think it would lighten the burden for small business people. To the contrary, I think the result would be they would be much more in the dark.

Honest people disagree. I must also tell the Senator the view that I have expressed is clearly the view of the Internal Revenue Service. They do not want to have additional burdens imposed upon them.

I rise simply to make that statement so that the RECORD will reflect that there is another opinion about how this amendment will affect small business people.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I rise enthusiastically in support of this amendment. I do so because I think we need to send a signal to the Internal Revenue Service that a regulation is a regulation. There is an old story from down on the farm that you may have heard. If it walks like a duck and if it talks like a duck, it is a duck. But in the case of the Internal Revenue Service, if it walks like a duck, and if it quacks like a duck, the Internal Revenue Service sometimes says that it is not a duck.

An extension of legislation passed by this body, we would call a regulation. For most every department of the administrative branch of Government what should look like a regulation, read like a regulation, and regulate like a regulation is a regulation, except when it comes to the Internal Revenue Service.

So, this legislation will rectify that, and make the Regulatory Flexibility Act applicable to the Internal Revenue Service as it ought to be so that they cannot hide behind some sort of twisted rationale as they are now able to do.

There should be no bureaucracy in the Federal Government that is immune from the basic protection for American citizens. And to some extent, to a considerable extent, Mr. President, the Internal Revenue Service falls into that category, that they are a sacred cow, that somehow they can operate and are answerable only unto themselves.

This amendment will help change this. The Senator from Tennessee is extending a greater deal of protection to American taxpayers, and he is doing it by simply having this agency operate within the same bounds as most other agencies in the administrative branch of Government. I compliment him for this move that is going to bring this protection to the American people.

● Mr. GRASSLEY. Mr. President, I am happy to support the amendment by Senator SASSER that would fully apply the Regulatory Flexibility Act to the regulations of the Internal Revenue Service.

My Judiciary Subcommittee on Administrative Practice and Procedure has jurisdiction over the Administrative Procedure Act, which we amended with the "Reg Flex" Act in 1980. We in the Congress recognized that the most dynamic sector of our economy—small business—was too often crippled by senseless Federal regulation and paperwork.

The Reg Flex Act ensures that Federal agencies analyze the economic effects of their proposed regulations—especially as they impact on small business.

The Reg Flex Act has worked well over the past 6 years for our Nation's small businesses and entrepreneures. At one agency, however, the congressional goal of more enlightened and less burdensome rules has not been realized.

You see, the Internal Revenue Service, unlike all other Federal agencies, does not follow the analysis require-

ments of the Reg Flex Act. The IRS is exempt, because they characterize most tax regulations as "interpretive," and thus not covered by the APA or by the Reg Flex Act.

As our recent experience with the so-called "auto log" rules show, the agency and the public would benefit from a serious analysis of the proposed IRS rule, and alternatives to it.

The IRS could have avoided a lot of problems for itself—not to mention American small businesses—had it first done a regulatory analysis of the "auto log" rule.

I support this amendment, because it puts aside arbitrary distinctions between "interpretive" and "legislative" rules and uses the Reg Flex Act as it was intended. This will make for better, more thought-out regulations—ones worthy of the public's support.

Again, I commend the sponsors of the amendment.●

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah——

The PRESIDING OFFICER. I am sorry. There is an amendment pending.

Mr. HATCH. I believe we can accept the amendment shortly.

Mr. SASSER. May I say to my friend from Utah that I am all for moving the adoption of our amendment and accept it also.

Mr. HATCH. I did not realize the parliamentary situation. This will take about a minute. I will be happy to withdraw it. Let me withdraw it.

Mr. SASSER. Will the Senator withhold for about 2 minutes?

Mr. HATCH. I will be glad to and then we will get this taken care of.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee has the floor.

Mr. BRADLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. BRADLEY. Mr. President, I would like to respond to the Senator from Tennessee and the Senator from Iowa.

I understand that small businesses are impacted by Government regulations. Government regulations are written to interpret the laws that we write. The clearer we write the laws, the less need there is for detail and, as the Senator points out, sometimes contradictory regulations.

The fact of the matter is that this is your typical predictable IRS-fashioned amendment. The fact of the matter is the IRS is now overloaded. They only audit 1 percent of all the returns in this country. They have had a budget cut.

We ask them to put out public interpretations to advise all segments of the population. And we cut their budget.

Mr. President, I would simply say that I think the result of imposing these additional analyses on the Internal Revenue Service will not be any lightened burden for small business but will be more delay and more delay and more delay before they get the kind of interpretive rulings that they need in order to function.

Mr. President, I think this is an unfortunate amendment. But I understand it is widely supported. I simply would like to offer my objection to this amendment, and hope that it is lost somewhere between here and conference.

Mr. SASSER addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. SASSER. Mr. President, I first express my appreciation to my distinguished friend from Iowa for his kind and gracious remarks. I must say that I appreciate very much his support of this amendment. I think it reflects the traditional concerns of the Senator from Iowa for small business in general and for small business in the State of Iowa in particular.

I will respond just briefly to my able friend from New Jersey. If the Internal Revenue Service is too busy to issue appropriate interpretative rules to the small business communities across the country, if it is too busy to effectuate the provisions of this act as all other agencies have, then the Internal Revenue Service I would submit is simply too busy. Perhaps we ought to address the problem of additional staff, or additional funding, or address some means by which the IRS can fulfill its obligations under the statutes of the United States.

Mr. President, this amendment has been approved by the distinguished chairman of the Senate Finance Committee, and also the able ranking member from Louisiana. And I might include the fact that our distinguished friend from Ohio has also looked on this amendment with favor.

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Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. LONG. Mr. President, may I ask the distinguished Senator if he is likely to have any problems in his committee, if the members of his committee would accept the amendment?

Mr. HATCH. No; I do not think there will be any problems with the amendment.

Mr. LONG. All right.

The PRESIDING OFFICER. Is there further debate on the amendment of the Senator from Tennessee? If not, the question is on agreeing to the amendment.

The amendment (No. 2124) was agreed to.

Mr. SASSER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GRASSLEY. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2131

(Purpose: To make parallel amendments to the Employee Retirement Income Security Act of 1974)

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. KENNEDY, and Mr. METZENBAUM, proposes an amendment numbered 2131.

Mr. HATCH. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2032, line 14, insert "or section 204(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1354(g))" after "1954".

On page 2073, between lines 17 and 18, insert the following new subsection:

(d) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Paragraph (2) of section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to read as follows:

"(2) A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

"(A) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

"(B) A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

"Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

"(C) A plan satisfies the requirements of this subparagraph if—

"(i) the plan is a multiemployer plan (within the meaning of section 414(f) of the Internal Revenue Code of 1954), and

"(ii) under the plan an employee who has completed at least 10 years of service has a nonforfeitable right to 100 percent of the

employee's accrued benefit derived from employer contributions.".

(2) REPEAL OF CLASS YEAR VESTING.—Subsection (c) of section 203 of such Act is amended by striking out paragraph (3).

(3) CONFORMING AMENDMENTS.—

(A) MINIMUM VESTING STANDARDS.—Section 203(c)(1)(B) of such Act is amended by striking out "5 years" and inserting in lieu thereof "3 years".

(B) BENEFIT ACCRUAL REQUIREMENTS.—Subsection (i) of section 204 of such Act (29 U.S.C. 1054(i)) is amended to read as follows:

"(i) CROSS REFERENCE.—

"For special rules relating to plan provisions adopted to preclude discrimination, see section 203(c)(2).".

On page 2073, line 18, strike out "(d)" and insert in lieu thereof "(e)".

On page 2141, between lines 9 and 10, insert the following new subsection:

(c) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Paragraph (2) of section 203(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(e)(2)) is amended to read as follows: "(2)(A) For purposes of paragraph (1), the present value shall be calculated—

"(i) by using the applicable interest rate to the extent the accrued benefit (using such rate) is not in excess of $3,500, and

"(ii) by using 120 percent of the applicable interest rate with respect to any portion of the accrued benefit in excess of $3,500 (as determined under clause (i)).

"(B) For purposes of subparagraph (A), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.".

(2) CONFORMING AMENDMENT.—Paragraph (3) of section 205(g) of such Act (29 U.S.C. 1055(g)(3)) is amended to read as follows:

"(3)(A) For purposes of paragraphs (1) and (2), the present value shall be calculated—

"(i) by using the applicable interest rate to the extent the accrued benefit (using such rate) is not in excess of $3,500, and

"(ii) by using 120 percent of the applicable interest rate with respect to any portion of the accrued benefit in excess of $3,500 (as determined under clause (i)).

"(B) For purposes of subparagraph (A), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.".

On page 2141, line 10, strike out "(c)" and insert in lieu thereof "(d)".

Mr. HATCH. Mr. President, the amendment that Senators KENNEDY, METZENBAUM, and I are offering today is a housekeeping measure.

It would ensure that the changes which we are making in Federal pension policy through amendments to the Tax Code are reflected in the Employee Retirement Income Security Act of 1974 [ERISA].

My colleagues who are not pension law experts may not realize that ERISA and the Tax Code contain several provisions which are the same, and the two statutes must be read together for an accurate statement of the law. Because of this relationship, one statute cannot be amended without consideration being given to the impact such changes may have on the other.

To preserve this symmetry, the amendment we are offering today simply conforms ERISA, where necessary, to the changes H.R. 3838 makes to the Tax Code provisions governing pension plans. The amendment is technical in nature and, as I understand, is without opposition.

As the chairman and ranking member of the Committee on Labor and Human Resources, we feel it is important that ERISA be conformed to the retirement policy changes being made in H.R. 3838 to ensure that plan sponsors and plan participants are not confused with regard to their rights and obligations under the law. I hope my colleagues will join me in supporting this amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2131) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PACKWOOD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LONG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ESOP'S AS A TECHNIQUE OF CORPORATE FINANCE

Mr. LONG. Mr. President, the Senate acted twice today with regard to employees stock ownership plans.

I would like to include in the RECORD, not necessarily with reference to either of those two amendments, but just for the edification of the Senate and those who would like to know more about the employees stock ownership plans, a statement entitled ESOPs as a Technique of Corporate Finance.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

ESOP PROVISIONS OF THE TAX REFORM ACT OF 1986

Mr. LONG. Mr. President, H.R. 3838, the Tax Reform Act of 1986, contains several amendments that provide incentives for broadening capital ownership through employee stock ownership plans. The employee benefit plans, more commonly known as ESOPs, are intended to be utilized as a corporate financing technique to enable employees to gain a capital interest in their employer through the plan's purchase of employer stock.

The ESOP provisions in H.R. 3838 are a clear signal of continued congressional approval of the use of ESOPs. Indeed, more than approval, we mean to encourage American businessmen to use ESOPs in many ways, including leveraged buyouts. The act provides, for example, an extension of the current tax deduction for ESOP dividends to situations in which those dividends are used to repay ESOP loans.

The purpose of these amendments is to encourage the growth of ESOPs in order to broaden capital ownership and particularly to create a stock ownership interest for employees, whose dedication and motivation is so crucial to increasing the productivity of our economic system. The use of ESOPs as a technique of corporate finance furthers these goals.

To date we have witnessed a steady growth in the number of companies adopting ESOPs, a trend due in part to the congressional intent reflected in incentives provided for utilizing ESOPs as a technique of finance. Since the passage of the Regional Rail Reorganization Act of 1973, the Congress has repeatedly expressed its interest in encouraging ESOPs as an ownership-broadening method for companies to finance their capital requirements and transfers in ownership.

Other laws expressing that congressional intent include the Employee Retirement Income Security Act of 1974, the Trade Act of 1975, the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Revenue Act of 1978, the Regional Rail Reorganization Act Amendments of 1978, the Small Business Development Act of 1980, the Chrysler Loan Guarantee Act of 1980, the Northeast Rail Service Act of 1981, the Economic Recovery Tax Act of 1981, the Trade Adjustment Assistance Act Amendments of 1983 and the Deficit Reduction Act of 1984.

Because of this unique purpose that ESOPs serve, special provisions were included in the Employee Retirement Income Security Act of 1974 [ERISA] to distinguish ESOPs from other employee benefit plans. We are beginning to see the results of those legislative efforts today in expanding capital ownership and in increasing productivity. Accordingly, an aim of the legislation before us is to continue the congressional tradition of vigorously promoting growth in the number and uses of ESOPs.

As to leveraged buyouts, the Nation has witnessed a dramatic increase in the role of such transactions as a method of transferring ownership of income-producing capital assets. For example, mergers and acquisitions totaled $35 billion in 1980, skyrocketing to $175 billion by 1985. Since a primary objective of ESOPs is to advance broader capital ownership and employee stock ownership in particular, these transactions provide a tremendous opportunity for ESOPs to make significant progress toward achieving their primary goal. Accordingly, one goal of the provisions of H.R. 3838 is to provide an incentive for American businessmen to use ESOPs in structuring leveraged buyout transactions so that employees in the affected companies will become the beneficiaries of those transactions.

These transactions utilize enormous amounts of capital financing tax benefits (for example, deductions for depreciation, interest, etc.). Some would argue that regardless of who owns the enormous amounts of income-producing capital transferred in such transactions and regardless of who benefits from the ownership of the capital financed with those tax benefits, lever-

aged buyouts are per se desirable, efficient and good for the economy. That may or not be the case and certainly reasonable people can disagree on that point.

Yet I cannot help but believe that those transactions would be far more desirable, result in far more efficiency and do much more good for the economy if they were structured in such a way that the employees in those companies were allowed to become substantial beneficiaries of those transactions. The only corporate financing technique able to accomplish that goal is the employee stock ownership plan, and it is my hope that the ESOP amendments in this legislation will provide additional encouragement for such transactions to be structured to include ESOPs.

On that point, I would like to take this opportunity to address a point of view that is at odds with the historical congressional support for the broad use of ESOPs in corporate finance and with the purpose of the ESOP amendments in H.R. 3838, the Tax Reform Act of 1986. Specifically, I am referring to the point of view that the fiduciary provisions of ERISA may be incompatible with the use of ESOPs in leveraged buyout transactions.

I disagree with those who hold that view. The fiduciary provisions of ERISA must be interpreted in such a way as to accommodate the unique purposes of ESOPs as stated in ERISA. ESOPs were intended by the Congress as a technique of finance to acquire the stock of an employer and to hold that stock in trust for employees of the employer.

This purpose, which is distinct from the primary purpose of many other employee benefit plans of providing retirement benefits, was clearly stated not only in ERISA but in various subsequent legislation enacted by the Congress. The ERISA fiduciary rules are sufficiently flexible to accommodate the distinctive financing purpose of this special employee benefit plan. The fiduciary rules should not be intepreted to thwart the congressional policy—which in this legislation is restated as the national policy—of encouraging the use of ESOPs as an ownership-broadening technique of corporate finance.

Administrative action limiting this policy would conflict with the congressional direction provided in section 803(H) of the Tax Reform Act of 1976 which clearly indicates that ESOPs objectives should not be made unattainable by regulatory actions that, "* * * treat employee stock ownership plans as conventional retirement plans, which reduce the freedom of employee trusts and employers to take the necessary steps to implement the plans, and which otherwise block the establishment and success of the plans." The intent of Congress provision in this legislation restates and updates this congressional direction to once again indicate that national policy favors the use of ESOPs as a technique of finance.

It is clear that effective use of ESOPs in leveraged buyout transactions depends on ESOPs having the flexibility to compete with other techniques of corporate finance. In short, ESOPs cannot be unduly burdened with regulations that artificially restrict the free market forces at play in buyout transactions and that tie the hands of company management and ESOPs so that ESOPs cannot effectively compete in the market place in which leveraged buyout transactions occur.

Mr. President, in light of: (1) the special provisions in ERISA that recognize the difference between ESOPs and traditional retirement plans; (2) the special laws that Congress has passed encouraging the use of ESOPs as a technique of corporate finance; and (3) the clear legislative mandate in, among other places, section 803(H) of the Tax Reform Act of 1976 and this legislation, it is clear that no special provisions need be added to ERISA to ensure that neither the executive branch nor the courts defeat the purpose of these or prior ESOPs amendments by interpreting and applying the fiduciary provisions of ERISA in a way that would make it difficult for ESOPs to participate in leveraged buyout deals.

Far from being incompatible, the provisions of ERISA are carefully drafted so that they do not inhibit the use of ESOPs financing in corporate transactions, including leveraged buyouts. These leveraged buyout transactions present a great opportunity for employees to share in capital ownership. ESOPs provide employees with the financial capability to effectively and successfully acquire large holdings of employer stock.

Of course, ESOPs trustees must act prudently in the transactions they undertake on behalf of ESOPs beneficiaries. As long as it can be demonstrated that the terms of an ESOPs transaction are at least as favorable to the ESOPs as an arm's length transaction between independent parties, an independent fiduciary is not required.

As long as the fiduciaries are careful in reviewing the transaction to ensure that it is fair to the ESOPs, including an economically realistic review of differences in consideration given by the ESOPs for its stock versus the consideration given by other investors, there is nothing in ERISA that prohibits ESOPs participation in leveraged buyout transactions provided the ESOPs pays no more than fair market value for the stock it acquires.

Congressional intent is clear that the primary purpose of ESOPs is to acquire stock of the employer and not to provide retirement benefits. Leveraged buyout transactions provide ESOPs with an opportunity to do that in such a way that the ESOP can gain a major stake in the employer.

ERISA expressly authorizes the acquisition and holding of employer stock by ESOPs, and any agency interpretation of ESOPs trustee fiduciary duties that would thwart these purposes would be inconsistent with the clear intent of ERISA. In short, no legislative modification of or exemption from ERISA's fiduciary provisions is needed to ensure that the goals of both present ESOPs law and pending ESOPs amendments in H.R. 3838 can be fully achieved.

Indeed, this question of ESOPs and ERISA enforcement is not new. This question was raised, as I mentioned earlier, in 1976 when Congress was deliberating on the Tax Reform Act of 1976. At that time, Congress, announced that executive and judicial branch actions would be inconsistent with Congressional intent if, as stated in the Conference Committee Report on the Tax Reform Act of 1976 (H.R. Rep. No. 1515), they make "it virtually impossible for ESOPs, and especially leveraged ESOPs, to be established and function effectively." Similarly, in 1980, the Senate Finance Committee published a Committee Print entitled "Employee Stock Ownership Plans—An Employer Handbook". In that handbook, the Committee documented the Congressional position on ESOPs and ERISA enforcement. That report contains a careful analysis of the law and explains how Congress intended ERISA fiduciary provisions to be applied to ESOP transactions. Congressional intent on this issue is quite clear.

Certain excerpts from this Finance Committee Handbook are as follows:

(Staff of Senate Finance Committee, 96th Cong. 2d Sess., Employee Stock Ownership Plans—An Employer Handbook (Comm. Print 1980)).

Like all qualified plans, an ESOP is subject to the fiduciary responsibility provisions of ERISA and the "exclusive benefit of employees" requirement under the Code.

Specifically, the ESOPs must satisfy the requirements of ERISA section 404(a)(1), which imposes upon fiduciaries the standard of discharging their duties under the plan ". . . solely in the interest of the participants . . . and for the exclusive purpose of providing benefits to participants . . ." In addition, the "prudent man" standard of ERISA section 404(a)(1)(B) is applicable to ESOPs fiduciaries, and the ESOPs loan and stock purchase exemptions from the prohibited transaction provisions of ERISA section 406 must be met when the ESOPs acquires employer stock.

In applying these fiduciary standards to an ESOP, it is important to understand the purposes of an ESOP as an employee benefit plan and the basis on which it is recognized for tax-qualified status. In the Revenue Act of 1921, stock bonus plans (the basic element of an ESOPs) were first granted (along with profit sharing plans) tax-exempt status. It was not until the Revenue Act of 1926 that such status was extended to pension plans. The purpose for which stock bonus plans were granted tax-exemption was to encourage corporations to provide stock ownership interests to their employees. Providing retirement benefits for employees has always been a secondary purpose for the establishment of a stock bonus plan. In Revenue Ruling 69-65, the Internal Revenue Service stated that the purpose of a stock bonus plan is ". . . to give the employee-participants an interest in the ownership and growth of the employer's business . . ." The existing regulations under Code section 401(a), in defining the three categories of qualified plans, specify retirement benefits as a feature of pension plans, but not as a feature of profit sharing plans and stock bonus plan (except that benefits may be deferred until retirement). There appears to be no requirement under the Code section 401(a) that a stock bonus plan be a "retirement plan."

It may be argued that ERISA, in stating the objective of protecting retirement security of employees, has not imposed the standard of providing retirement benefits as the objective of all qualified employee benefit plans. However, there are specific references under ERISA to a different standard being applicable to different types of plans.

The definition of "pension plan" in section 3(a) of ERISA recognizes that a "pension plan" is one which "provides retirement income to employees or results in a deferral of income by employees for periods extending to the termination of covered employment or beyond." Section 402(b)(1) of ERISA requires ". . . a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan . . ." (not the objective of retirement security). Section 404(a)(1)(B) of ERISA sets out the prudent man standard as one applicable to ". . . the conduct of an enterprise of a like character and with like aims." The legislative history of ERISA recognizes ". . . the special nature and purpose of employee benefit plans . . ." and ". . . the

special purpose . . ." of certain individual account plans which are designed to invest in employer securities. In addition, the definitions under ERISA Section 407(d)(6) and Code section 4975(d)(7) specify that an ESOP is ". . . designed to invest primarily in qualifying employer securities . . ." The recognition of an ESOP as an employee benefit plan which may borrow to acquire employer stock further demonstrates Congressional intent an ESOP is an employee benefit plan which may borrow to acquire employer stock further demonstrates Congressional intent that an ESOP is not primarily a retirement plan, but rather has as its primary objective the providing of stock ownership interests for employees.

This recognition by Congress of the special purposes of an ESOP does not exempt the ESOP from the general fiduciary standard of ERISA, but rather requires that the interpretation of these standards must be based upon the ESOP objective of providing stock ownership for employees. Retirement benefits may be provided to employees through their stock ownership acquired under an ESOP, but the fiduciaries are primarily directed to provide stock ownership (rather than retirement benefits) for employees in a manner consistent with the fiduciary duties under Title I of ERISA.

Accordingly, it would appear that a prudent ESOP fiduciary, subject to fiduciary duties under ERISA section 404(a)(1), is one which prudently acquires and holds, and in some cases distributes, employer stock for the benefit of participants (and their beneficiaries), prudently using debt financing where appropriate, in a manner consistent with the plan documents and the provisions of title I of ERISA. In order to avoid having ESOPs acquisitions of employer stock be prohibited transactions under ERISA Section 406 and Code 4975, the special exemptions under ERISA Section 408 must also be complied with by the ESOP fiduciaries.

ESOP purchases of employer stock must comply with the "exclusive benefit of employees" requirement under Code section 401(a), as well as the "exclusive purpose" and the "solely in the interest of the participants" requirements of ERISA section 404(a)(1)(A). In Revenue Ruling 69-494, the Internal Revenue Service outlined various investment requisites under the exclusive benefit rule which should be satisfied when a qualified employees' trust invests funds in employer securities. That ruling recognized that the exclusive benefit requirement with respect to investments does not prevent others from also deriving some benefit from a transaction with the trust, as a seller would make employer stock available to the trust only if there was a benefit to him by selling. Accordingly, before ERISA, the Internal Revenue Service established the following "safe harbor" investment test which must be met for a purchase of employer stock to comply with the exclusive benefit requirements:

(1) The cost must not exceed fair market value at the time of purchase;

(2) A fair return commensurate with the prevailing rate must be provided;

(3) Sufficient liquidity must be maintained to permit distributions in accordance with the terms of the plan; and

(4) The safeguards and diversity that a prudent investor would adhere to must be present.

With respect to an ESOP, it appears that only the "fair market value" and "prudent investor" requirements are applicable. Revenue Ruling 69-65 specifically exempts stock bonus plans (and presumably any ESOP) from the requirement for a fair return on employer stock. The ESOP is likewise exempt from the diversification of investments requirement under ERISA Section 404(a)(2), as an "eligible individual account plan" to the extent of investments in employer securities.

Therefore, an ESOP's acquisition of employer stock from the employer corporation, or from an existing shareholder, would satisfy the exclusive benefit requirement of ERISA and Code section 401(a), so long as the investment is one that is prudent for an ESOP fiduciary and the purchase price does not exceed fair market value. Section 408(e) of ERISA, which provides for an exemption from the prohibited transaction rules for the acquisition of employer stock from a party in interest, appears to require a purchase price equivalent to the fair market value of the stock.

Without the special exemptions provided in ERISA section 408 and Code section 4975(d), ESOP financing transactions might be prohibited transactions under ERISA section 406(a) and Code section 4975(c). Congress, however, recognizing the special purposes and objectives of an ESOP, as both an employee benefit plan and a technique of corporate finance, included exemptions for certain transactions from the general prohibited transactions rules.

Section 406(a)(1)(A) of ERISA and Section 4975(c)(1)(A) of the Internal Revenue Code include as a prohibited transaction a ". . . sale or exchange . . . of any property between a plan and a party in interest (or a disqualified person). . . ." Without an exemption, an ESOP (or any other eligible individual account plan) would be prohibited from acquiring employer stock from the employer corporation or from any shareholder who is a party in interest. . . . However, ERISA section 408(e) and Code section 4975(d)(3) provide exemptions that permit the acquisition of employer stock by an ESOP from a party in interest (or a disqualified person) so long as the purchase price constitutes "adequate consideration" and no commission is charged with respect to the transaction.

"Adequate consideration" is defined in ERISA section 3(18) in a manner which generally restates the requirement for "fair market value" set forth in Revenue Ruling 69-494. Where there is a generally recognized market for employer stock, adequate consideration is the price prevailing on a national securities exchange (if applicable), or the offering price established by current bid and asked prices quoted by independent parties. Where there is no generally recognized market for employer stock, adequate consideration is fair market value, as determined in good faith and in accordance with generally accepted methods of valuing closely-held stock and in accordance with regulations to be promulgated by the Secretary of Labor.

It is important to note that the Internal Revenue Service, in the self-dealing regulations for private foundations states that a good faith effort to determine fair market value is ordinarily shown where (a) the person making the valuation is not a disqualified person and is both competent to make the valuation and is not in a position to derive an economic benefit from the value utilized, and (b) the method utilized in the valuation is a generally accepted method for valuing for purposes of arm's length business transactions where valuation is a significant factor.

Therefore, the valuation of employer stock is the most significant aspect of ESOP transactions when there is no generally recognized market for employer stock and a valuation by an independent appraiser, experienced in valuing closely-held corporations, is essential for alleviating the potential liabilities for prohibited transaction excise taxes. Presumably, traditional IRS guidelines for valuation in estate tax matters, as set out in Revenue Ruling 59-60, will be the basis for Department of Labor regulations defining fair market value under ERISA.

Section 406(a)(1)(B) of ERISA and Code section 4975(c)(1)(B) include as a prohibited transaction any ". . . direct or indirect . . . lending of money or other extension of credit between a plan and a party in interest (or disqualified person) . . . ." Without an exemption, this provision would prohibit any debt financing for the acquisition of employer stock by an ESOP, where a party in interest extends credit through a direct loan, a loan guarantee or an installment sale.

However, ERISA section 408(b)(3) and Code section 4975(d)(3) provide an exemption from the prohibited transaction rules, available only to an ESOP and not to other eligible individual account plans, which permits an ESOP to borrow money involving an extension of credit from a party in interest to effect its acquisitions of employer stock. It is this exemption that distinguishes an ESOP from other plans which invest an employer stock and characterizes an ESOP as a technique of corporate finance.

The following conditions are imposed by ERISA for the ESOP loan exemption:

(a) The ESOP must satisfy the statutory definition of ERISA section 407(d)(6), Code section 4975(e)(7) and IRS regulations;

(b) The loan must be primarily for the benefit of participants;

(c) The interest rate must be reasonable; and

(d) Any collateral given by the ESOP to a party in interest must be limited to qualifying employer securities.

In addition, further guidelines have been established in regulations promulgated by the Internal Revenue Service (and the Department of Labor) through an interpretation of the term ". . . primarily for the benefit of participants. . . ." Certain of the additional conditions for the ESOP loan exemption are clear from legislative history relating to the ESOP financing concept (both before and after ERISA) and from the regulations issued by the Department of Labor. The following additional requirements are included in the regulations and must be satisfied in order to exempt an ESOP debt financing transaction from the general prohibited transaction rules.

(1) The loan (or other extension of credit) must be for the purpose of acquiring employer stock or repaying a prior exempt loan and must be based on equitable and prudent financing terms. The interest rate must not be so high that plan assets might be drained off, and the terms of the loan must be as favorable to the ESOP as the terms resulting from arm's length negotiations between independent parties.

(2) Any collateral pledged by the ESOP (whether or not pledged to a party in interest) must be limited to the shares of employer stock acquired with the proceeds of that loan or freed from prior encumbrance by the proceeds.

(3) In general, any shares of employer stock given as collateral by the ESOP must

be released from pledge on a pro-rata basis as loan principal is repaid.

(4) The liability of the ESOP for repayment of the loan must be limited to contributions received from the employer corporation (other than contributions of employer stock) and to earnings on trust assets, including dividends on employer stock.

(5) The lender must have no recourse to assets held in the ESOP other than employer stock remaining pledged as collateral.

If an ESOP debt financing transaction fails to satisfy the conditions for the exemption, a prohibited transaction may result under Code section 4975. In that event, the initial 5 percent per year excise tax would be imposed on any disqualified person extending credit to the ESOP, with the additional 100 percent tax being imposed if the transaction is not corrected. For purposes of the excise tax, the entire loan principle may be the amount involved, or the amount involved may be limited to that portion of the loan (or interest thereon) which causes the prohibited transaction to occur. Correction may require adjustment in the terms of the ESOP loan or, in some situations, rescission of the transaction. The regulations promulgated by the Internal Revenue Service and the Department of Labor deal with this issue on a more in-depth basis.

Mr. LONG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2132

(Purpose: Relating to the definition of real estate broker for reporting purposes.)

Mr. HUMPHREY. Mr. President, on behalf of Senators HEINZ, MATTINGLY, EAST, HECHT, NICKLES, LAXALT, HAWKINS, and LEAHY, and myself, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. HUMPHREY], for himself, Mr. HEINZ, Mr. MATTINGLY, Mr. EAST, Mr. HECHT, Mr. NICKLES, Mr. LAXALT, Mrs. HAWKINS, and Mr. LEAHY, proposes an amendment numbered 2132.

Mr. HUMPHREY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

Mr. LONG. Mr. President, objection.

The PRESIDING OFFICER. Objection is heard.

The clerk will report.

The assistant legislative clerk read as follows:

On page 1623, strike lines 18 through 23 and insert:

"(A) the title company,

"(B) the mortgage lender,

"(C) the settlement attorney or other person responsible for closing the transaction,

"(D) the seller's broker,

"(E) the buyer's broker, or

Mr. HUMPHREY. Mr. President, this amendment has been discussed with managers on both sides of the aisle and it has been cleared on both sides of the aisle.

Mr. President, essentially the amendment would relieve realtors of responsibility which the bill places on them to report the sales transactions involving real property. Both sides have agreed to accept the amendment. I do not think further debate is necessary.

Mr. President, I move adoption of the amendment.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2132) was agreed to.

Mr. HUMPHREY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HUMPHREY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BRADLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2134

Mr. BRADLEY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from New Jersey [Mr. BRADLEY] proposes an amendment numbered 2134.

Mr. BRADLEY. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 1401, between lines 13 and 14, insert the following:

(e) EMPLOYEE NOTIFICATION.—The Secretary of the Treasury is directed to require, under regulations, employers to notify any employee who has not had any tax withheld from wages that such employee may be eligible for a refund because of the earned income credit.

Mr. BRADLEY. Mr. President, this amendment is very clear. It simply says the Internal Revenue Service should study ways to ensure that eligible taxpayers file a return claiming the earned income tax credit even where those employees are not subject to withholding.

I think it has been cleared on both sides.

Mr. PACKWOOD. Yes, Mr. President.

Mr. LONG. Yes, Mr. President.

Mr. PACKWOOD. Mr. President, I want to emphasize again that this is an amendment that, under normal circumstances, you could almost call technical, but because we want to make sure that a technical amendment is nothing but technical, we asked the Senator to take it out and offer it as an amendment. It is a perfectly fine amendment. I hope it passes.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment.

The amendment (No. 2134) was agreed to.

Mr. BRADLEY. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. LONG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDENT OFFICER. What is the will of the Senate?

Mr. LONG. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. DOLE. Mr. President, let me indicate at the outset if we can get this agreement, there will be no more votes tonight. If we cannot, then the managers want to plow ahead.

Am I correct?

Mr. PACKWOOD. You have got it.

Mr. DOLE. Mr. President, let me go through the entire agreement, which will take a minute or two.

□ 2040

Mr. President, let me repeat now, if we can obtain this agreement, there will be no more rollcall votes tonight. If we cannot, there probably will be, if that is an inducement.

Mr. President, let me go through the entire agreement and then answer if any body has questions. Let me also state before I start down this long list of amendments—and it is long—that in visiting with the chairman of the committee—I have not had a chance to visit with Senator LONG—I think about 80 percent of them are going to go very quickly, so I do not want to discourage anyone when you hear the list. I will propound the entire unanimous-consent request and then I will ask the Chair to rule on the request.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Mr. President, I ask unanimous consent that the following amendments be the only amendments in order to H.R. 3838 with the exception of the committee substitute.

I further ask unanimous consent that any rollcall votes ordered on Friday, after the fourth rollcall vote of the day, or Monday of next week, if H.R. 3838 is the pending business, be postponed to occur beginning at 10 a.m. on Tuesday, June 24, in the order in which the yeas and nays are ordered excluding the vote on the committee substitute or final passage.

I further ask unanimous consent that final passage occur on H.R. 3838 no later than 4 p.m. on Tuesday, June 24, and that paragraph 4 of rule XII be waived.

Now, these are the amendments: First, Senator PACKWOOD and Senator LONG, a technical amendment; Senator MELCHER relating to capital gains in agriculture with revenue offset from foreign deferral of income; Senator CHILES—did we do that?

Mr. MELCHER. Will the majority leader yield?

Mr. DOLE. I will be happy to yield to the distinguished Senator from Montana.

Mr. MELCHER. Revenue offset is the amendment we tried last night. I said at the time I would replace that with another. I cannot give the majority leader that citation right now. I hope that does not make any difference.

Mr. DOLE. Would it be capital gains?

Mr. MELCHER. It would be on capital gains.

Mr. DOLE. So it will relate to capital gains in agriculture.

Mr. MELCHER. That is correct. I thank the majority leader.

Mr. DOLE. Senator CHILES, sense of the Senate or other type relating to the budgetary effects of the tax bill; Senator LEAHY, satellite communications; Senator BUMPERS, strike amnesty provisions in the bill; Senator BAUCUS, second-degree amendments to Bumpers' amnesty amendment; Senator MOYNIHAN, relating to foreign area section 902/312; Senator PRYOR, modify installment sales; DECONCINI, installment sales; BOREN, installment sales; DECONCINI, Technology Transfer Corporation; MITCHELL, low-income housing; MATSUNAGE, exclude income from convention and trade show activities; FORD, capitalization of utilities interest expense; CRANSTON, computer software royalty income; CRANSTON, ordinary loss treatment for non pro rata stock surrenders; GORE, thermal steam transfer facility, Coffee County, TN; Senator QUAYLE, transition rule; Senator DURENBERGER, iron ore trust; Senators HEINZ and BOREN, modify depreciation preference for minimum tax; Senator MATTINGLY, ITC clarification; Senator JOHNSTON, transition rule for minority U.S. shareholders of a passive foreign investment company in existence on January 1, 1986, controlled by a foreign revocable trust; ZORINSKY and BOREN, Internorth; Senator BYRD, UMWA pensions; Senator BYRD, a flood control amendment. Is that et cetera?

Mr. BYRD. Yes. It will be flood related. It will certainly only pertain to West Virginia if I offer it at all.

Mr. DOLE. Right. But it is in that area.

Mr. BYRD. Yes.

Mr. DOLE. It is either flood control or et cetera.

Mr. BYRD. Yes.

Mr. DOLE. Senator KENNEDY, Columbia Point; Senator HEFLIN, IRS commissions; Senator HEFLIN, a technical amendment; Senator DOLE, allow business expense deduction for seriously handicapped employees; Senator MATTINGLY, 5-year moratorium on changes in tax law; Senator STEVENS, exempt Native Alaskans from tax on reindeer income; Senator STEVENS, 1984 act, technical correction dealing with Alaska Native Corporation's net operating losses; Senator STEVENS, amendments striking various provisions in the bill; Senator STEVENS, exempting Native corporations from book income in certain instances;

□ 2050

Senator DOMENICI—a potash amendment.

Senator DOMENICI and Senator GRAMM—no use of tax revenues for deficit reduction.

Senator ARMSTRONG—indexing capital gains.

Senator GARN—investment tax credit on copper.

Senator MATHIAS—Senator PACKWOOD will explain that before the request is made.

Senator ABDNOR—Mesabi Airlines.

Senator MCCONNELL—parimutuel betting.

Senator WILSON—one, child support; two, irrevocable trust elections; three, excise tax on pension reversion; four, deductibility of expenses of the performing arts; five, non-pro rata stock surrenders.

Senator ARMSTRONG—dealing with provisions of pages 1026 and 1027 of the committee report.

Senator ARMSTRONG—miscellaneous investment company changes.

Senator ROTH—methanol blender.

Senator MOYNIHAN—six amendments: one, definition of a finance company; two, hydroelectric projects; three, supplemental student loans; four, fiscal year partnership; five, capital gains, six, common paymaster rule.

Senator GRASSLEY—two technical amendments: No. 1, Ruan Trucking; No. 2, Teleconnect.

That is all I have on my list.

Senator LONG. Mr. President, if we are going to vote on these, I feel compelled to offer my amendment on burial insurance policies.

Will the Senator include that?

Mr. DOLE. Yes.

Mr. BYRD. Mr. President, reserving the right to object, Mr. MOYNIHAN has an additional amendment—hedging exemptions.

Mr. DOLE. I am advised that we also left out the Gorton amendment on research cooperatives.

Mr. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senator is correct. The Senate will be in order.

Mr. LONG. Mr. President, I send an amendment to the desk. I am not calling it up.

Mr. BYRD. My President, further reserving the right to object, Mr. LEVIN and Mr. DODD withdrew their amendments earlier today and asked for time to speak on final passage. In view of the fact that they withdrew their amendments and asked for time, instead, to speak on final passage—I think each asked for circa 15 minutes.

Mr. PACKWOOD. I am confused. They are not asking for time immediately prior to final passage, for each to have 15 minutes, are they?

Mr. BYRD. They wanted 15 minutes each to speak on final passage. I do not think they would want the last half hour, or some such. But perhaps we could put the time in for them, in view of the fact that they withdrew the amendments.

Mr. DOLE. Mr. President, I ask unanimous consent that there be 15 minutes for the distinguished Senator from Michigan [Mr. LEVIN] and 15 minutes for the distinguished Senator from Connecticut [Mr. DODD] sometime during the day on Monday or Tuesday.

Mr. BYRD. Monday or Tuesday—that would be fine.

The second-degree amendments listed for Mr. BAUCUS to the Bumpers amnesty amendment may not be technically germane to the Bumpers amnesty amendment in the first degree.

Mr. DOLE. They would relate to the Bumpers amendment. Is that right?

Mr. BYRD. Could we find out whether the amendments relate to the Bumpers amendment? Otherwise, there is really no clear identification of the amendments.

Mr. President, it is my understanding that the Baucus amendments would relate to the amnesty amendment offered by Mr. BUMPERS, although they may not be technically germane.

Mr. LONG. Mr. President, a lot of amendments are relative but not germane under the precedents of the Senate. I would think that if the Senator tells us it is relevant to it and has

to do with the subject, that would be adequate.

Mr. DOLE. Mr. President, the Baucus amendments, which are second-degree amendments, relate to the Bumpers amnesty amendment. I add that to the list.

Mr. BYRD. Mr. President, on the Mitchell low-income housing amendment, there would be 2 hours for debate. The distinguished Senator from Maine [Mr. MITCHELL] and others who are going to be supportive of the low-income housing amendment would want to debate the amendment on Monday, with the understanding that the vote would be put over until Tuesday. They would like to have up to 2 hours.

Mr. LONG. Does that mean 1 hour on each side?

Mr. BYRD. No.

Mr. LONG. It means 2 hours on that side?

Mr. BYRD. They expect to use about 2 hours, but they would not want to lock in a time agreement. They would want to do it on Monday, with the understanding that the vote, if ordered by rollcall, would go over until Tuesday.

Mr. LONG. I hope they will not insist on speaking 2 hours on that amendment, because at this stage of the game, that is a long time for an amendment.

Mr. DOLE. I might say as to that amendment that I have an interest in it.

As I understand it, the chairman and the ranking minority member are about to reach an agreement. One way to ruin an agreement is to talk 2 hours. they might have second thoughts.

Mr. LONG. This late in the game, if you have to have 2 hours to explain an amendment, there must be something the matter with it.

Mr. DOLE. In any event, we could provide that on Monday they would not take——

Mr. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER (Mr. HECHT). The Senate will be in order.

Mr. DOLE. Mr. President, I yield to the Senator from Louisiana.

Mr. LONG. Mr. MATSUNAGA'S convention amendment would include a revenue offset relating to time of payment for private foundation excise tax. Someone might want to know about that.

□ 2100

Mr. DOLE. An amendment by Senator LAUTENBERG pertaining to insurance matters.

Mr. BYRD. Mr. President, I have no other comments to make with the exception of two.

One is that Senators will note that there are no time limitations on any one of the amendments identified. I hope we will have a good-faith understanding on all sides that Senators who call up their amendments understand that if they take very much time, they are going to be taking time possibly away from another Senator who may wish also to call up his amendment and have a little time to debate.

My proposal would be in the absence of a time limitation on any amendment either that we have a general time limit for debate with a minimum time on any amendment of say 30 minutes equally divided.

Mr. DOLE. Maximum.

Mr. BYRD. Or that we just go on good faith because Senators have stood on this floor today and indicated, most of them, the amount of time they would want on their amendments, and the time that they stated we all I think understood would be the maximum.

I feel that this agreement being what it is and it having taken so many hours of both leaders' time, both managers' time and all Senators' time, they have been very well kept up to date with respect to the identification of the amendments. They have had plenty of opportunities to offer their amendments, to identify their amendments, to state what their time limit would be. I would be willing in this instance taking a little gamble to just go on good faith that Senators will call up their amendments on both sides, if we can urge them to come to the floor, call up their amendments in time so there will not be a last-minute rush.

Would the distinguished majority leader and managers feel that we could operate on that basis in this instance?

Mr. DOLE. I would say I would leave it up to the managers. But it would seem to me that a number of these amendments that I am familiar with are not going to take much time at all. I would hope that no one will want 2 hours or 3 hours or whatever on an amendment. I would guess the managers could always, if they recognized that, shut off debate with a tabling motion. I think we can work it out.

Mr. PACKWOOD. I would also say anybody who simply does not come and call up his amendment and wants to jam it in 15 minutes before with no debate is less likely to get his amendment passed than they are if they come 3 or 4 hours early with some discussion.

Mr. BYRD. Very well. I think there is a pretty good understanding.

There is only one other proposal I would make to the distinguished majority leader, and that is that noting that the request provides for rollcall votes to begin at 10 a.m. on Tuesday and that there be final passage at 4 p.m. on Tuesday, taking into consideration that the usual Democratic and Republican conferences will require 2 hours consecutively, that means that there will only be 4 hours for rollcalls on Tuesday. I would be willing, if the distinguished majority leader would be willing, to not have those conferences on Tueday. I would feel much better about having the additional 2 hours for rollcall votes that may have been stacked rather than wait until 4 p.m. and then find we have to have six rollcall votes or seven or eight that may have been stacked.

Mr. PACKWOOD. I would suggest something further. There is no reason why we cannot move to 10-minute rollcalls if we have six or seven in a row or even 5-minute rollcalls if we are all here.

Mr. BYRD. Could we then get that into the request now that votes after a first rollcall vote, any votes subsequent immediately thereon to follow on in a stacked fashion would be limited to 10 minutes each?

Mr. DOLE. I make that request. I add that to our request.

I also indicate that on Tuesday, which is the policy luncheon time, I think we left it up to either side if they want to have the policy luncheon and run back and forth. I am not able to discuss that with the policy chairman, Senator ARMSTRONG, but it may be we will want to have ours and come in and out for votes.

I think the Senator is right. We need to use the time, so we will not be in recess from 12 to 2 on Tuesday.

Mr. BYRD. That will be fine.

I appreciate the distinguished majority leader's response. I think that solves it.

Mr. STEVENS. Mr. President, will the leader yield if he is through there?

Mr. BYRD. I have one other request and that is that Mr. HART have 5 minutes for debate at some point on Monday or on Tuesday on final passage.

Mr. MITCHELL. Mr. President, will the Senator yield?

Mr. DOLE. Let me yield to the Senator from Maine and then the Senator from Alaska, and then the Senator from Montana.

Mr. MITCHELL. I want to offer this. In the interest of expediting final consideration I had asked 2 hours to be equally divided on my amendment. I would be prepared, in view of the large number of amendments, to be of assistance to reduce that to an hour equally divided, if no one else objects to that.

Mr. DOLE. The Senator indicated to the chairman he would do that on Monday.

Mr. MITCHELL. Yes, I am willing to do it Monday afternoon at a time that would be convenient.

Mr. PACKWOOD. That is perfect.

Mr. DOLE. We modify the 2-hour request to 1-hour equally divided on a

Mitchell-Cohen amendment on Monday.

Mr. BYRD. Mr. President, as far as I know on this side of the aisle we are ready now to agree.

Mr. DOLE. Let me yield to the Senator from Alaska.

Mr. STEVENS. Mr. President, I thank the distinguished majority leader.

I had extra amendments that I have not listed yet about which I just want to ask the manager of the bill, the distinguished Senator from Oregon and chairman of the committee. Now, I have submitted to the committee over the last few months the request on the Endicott project that is located on the North Slope of Alaska and also a request to extend the provision of the 1984 act pertaining to interest during construction on the Alaska National Gas and Transmission System.

It is my understanding that in the technical provisions that those will be contained and they are deemed now technical and they will not require amendments. Is that correct?

Mr. PACKWOOD. I cannot answer the Senator's question right now. I will try to find out. I do not want to mislead the Senator by taking a guess.

Mr. STEVENS. I ask that two more amendments be added to the list to be qualified, one on the Endicott project, and one on the Alaska Natural Gas Transmission System.

May I make a similar request to the chairman. I requested a colloquy pertaining to construction of two major portions of a new project for the North Slope of Alaska, one being constructed in Oregon and one in Washington. If that colloquy is approved it is my understanding we would not need an amendment or a technical provision. Is the chairman familiar with that?

Mr. DOLE. Can we add those to the list?

Mr. PACKWOOD. I did not hear the Senator's question.

Mr. STEVENS. I was asking another. The Senator indicates the first two I mentioned are in all probability in the technical list. I do not want to pin him down. I want to reserve the right to offer an amendment if they are not. That is all.

Mr. PACKWOOD. I think the Senator better reserve his right. The technical list has to be agreed on by Senator LONG and myself. We are prepared to suggest they are technical. I do not want the Senator to lose his right to offer them

Mr. STEVENS. I state to the distinguished chairman I have not mendtioned the amendment on the project I have discussed with him, the two portions, one being built in Portland and the other in Seattle. The site preparation has not commenced as required by the report. If that colloquy is approved, I am informed I do not need an amendment. If it is not, I will need another amendment.

So I would inquire of my friend if he is familiar with that now. Could he tell me?

Mr. PACKWOOD. I am not familiar with it now. I think it better to reserve the amendment until we resolve it.

Mr. STEVENS. I ask then to reserve the other amendment dealing with the question of the lack of advance preparation on the sites north of the Arctic Circle for a project that has been underway a substantial period of time in preconstruction in Portland and Seattle.

□ 2110

Mr. DOLE. That would be one amendment.

Mr. STEVENS. That is the three that I am talking about in addition.

Mr. DOLE. Could you go over those three again so we could have those?

Mr. STEVENS. One is the Endicott project, one is the Alaska National Gas transitional provision, and the third is a colloquy pertaining to a project, I believe it is Arco's project, north of the Arctic Circle that is being prefabricated in Washington or Oregon.

Mr. DOLE. I would add those three, in addition.

Mr. STEVENS. I might say again, if they are in, I will not need the time to offer the amendments at all.

Mr. DOLE. In addition, Senator HEINZ indicates he has an Equimark amendment.

Mr. MATTINGLY. Mr. President, reserving the right to object, would the leader or the manager of the bill put in the unanimous consent agreement that bringing up the Mattingly sense-of-the-Senate resolution in reference to the 5-year moratorium, which is being held at the desk, be the first amendment on Tuesday?

Mr. DOLE. I think we can work that out without putting it in the request.

Mr. MELCHER. Will the majority leader yield?

Mr. DOLE. I am happy to yield to the Senator from Montana.

Mr. MELCHER. If I understood—it is a little complicated—but if I have understood the list of amendments, there are about 40 amendments; is that correct?

Mr. DOLE. Sixty-one.

Mr. MELCHER. Pardon me?

Mr. DOLE. I think we are back up to 61. They are coming in pretty fast here. The staff is still awake. That is the problem. I think it is 61.

Mr. MELCHER. Sixty-one.

And we are going to assume that about 30 of them may need rollcalls.

Mr. DOLE. Excuse me?

Mr. MELCHER. Are we to assume that about half of them would need rollcalls?

Mr. DOLE. I would doubt it. Again, I would leave it to the manager, but I would think many of them are not going to take 2 minutes, I would bet, if they take any time at all. I know of a dozen that are not going to be offered in that list. I have talked to Members who say they are not going to offer them. They want to keep them on the list for good luck. [Laughter.]

Mr. MELCHER. There would only be four rollcalls tomorrow, but we do not know when those rollcalls would occur, do we?

Mr. DOLE. We will try to do it early, I think a number of Members on both sides would like to leave here tomorrow at a reasonable time. We have had a tough week. If we can get this agreement, I would hope maybe no later than 2 or 3 o'clock tomorrow.

Mr. PACKWOOD. In terms of votes, you may be right. But, to the extent that we have amendments that are reasonably agreed to and people are willing to stay, I would just as soon knock out 10 or 15 if we can, if they do not require rollcalls, tomorrow.

Mr. MELCHER. Yes, 10 or 15 on tomorrow.

Mr. PACKWOOD. I would like to add, I think a number of these will be agreed upon. I hope we do not use up votes on the ones that are agreed upon, because we only have four votes and we might as well use those for something that is really controversial and get those out of the way.

Mr. MELCHER. Might I ask the majority leader, when does he plan on coming in tomorrow? I am trying to get an idea whether it is conceivable that, in 3 days, with the third day ending at 4 and the first day, hopefully, ending early, whether we can even handle all of those amendments. Some of us might not be able to bring amendments up.

Mr. DOLE. I am advised now that I have spoken incorrectly. There are 64 amendments. There were three that slipped in while we were talking. [Laughter.]

We have Friday, if we are in from say, 10 to 6, and Monday we are in from 10 until midnight, and Tuesday we start at 8 and go to 4, that would be 29 hours. That would average out to a half-hour per amendment.

But many of them are going to go in 5 minutes; many of them are just going to go with no time at all.

Mr. MELCHER. That would be 29 hours, but that would include the voting time, too.

Mr. DOLE. That does not count time for rollcalls. We have agreed, after the first rollcall, any other rollcalls would be 10 minutes in length on Tuesday.

Mr. MELCHER. Well, I am sorry I could not have offered my amendment today, but I was caught in a bind of trying to clear where the revenues would be and what the figures would be, and that takes a little time.

If I could ask the majority leader and the distinguished manager of the bill if it seems reasonable to be assured that there will be about 30 minutes sometime late Friday or Monday to offer an amendment.

Mr. DOLE. We will put it in the agreement that you have 30 minutes.

Mr. MELCHER. Then I have only one more request, and that is for 10 minutes for sometime on Tuesday for a discussion.

Mr. DOLE. Before or after final passage?

Mr. MELCHER. Before final passage.

Do I understand that is agreeable, I ask the majority leader?

Mr. DOLE. Yes.

Mr. MELCHER. I thank the majority leader.

Mr. DOLE. Mr. President, I am also advised that we have an additional Wilson amendment—that is about seven Wilson amendments—on unitary tax. I understand, if that is on the list, there will be a request from the distinguished minority leader that we add an unlimited number of Baucus amendments to the Wilson amendment dealing generally with the same subject.

Mr. BYRD. Mr. President, if I may respond, the answer is in the affirmative. And they would not necessarily be germane, which would mean that it would knock out the whole agreement, because we cannot say that a Senator can bring up an unlimited number of amendments and still say there is going to be a final vote at 4 o'clock on Tuesday. But that is what I have to say for the RECORD, and with the understanding that that would be part of the request, I say to the distinguished majority leader.

Mr. DOLE. I will make that a part of the request, that there be an unlimited number of Baucus amendments to the Wilson amendment dealing generally with the same subject, unlimited second-degree amendments.

□ 2120

Mr. LONG addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. LONG. Are we in recess now or just having a social hour?

[Laughter.]

Mr. DOLE. It is very important.

The PRESIDING OFFICER. The Senate is in session.

Mr. LONG. It seems to me if we are not going to do business we ought to put a quorum call in.

Mr. MELCHER. Will the majority leader yield.

Mr. DOLE. I am happy to yield.

Mr. MELCHER. I want to clarify a couple of points. I think he and I understand what we are agreeing to but I do not believe the Parliamentarian did. I checked with him. My request was that my amendment would be assured, that is a guaranteed time 30 minutes, either Friday if we are ready, or Monday. Is that correct?

Mr. DOLE. That is correct.

Mr. MELCHER. Friday if it is ready, or Monday.

Mr. DOLE. That is my understanding.

Mr. MELCHER. Second, that I would have 15 minutes for a discussion of the bill itself prior to voting on Tuesday.

Mr. DOLE. Does the Senator mean not immediately prior to final passage?

Mr. MELCHER. Not immediately prior but that I would be assured on Tuesday that I would be recognized for 15 minutes. The Parliamentarian stated it in such a way that it was clear that I would be recognized.

Mr. DOLE. That is no problem. I think the 30 minutes which would be even prior to final passage ought to be left to the managers of the bill and the leaders.

Mr. MELCHER. Yes.

Would the majority leader yield further?

Mr. DOLE. I am happy to.

Mr. MELCHER. Is there an amendment that is called a unitary tax amendment to be offered?

Mr. PACKWOOD. Let me clear that up. I am trying to get a hearing on unitary tax, and trying to accommodate some Members. If they bring up the unitary tax, there is not going to be any hearing. I am going to do the best I can to defeat it, if unitary tax is brought up.

Mr. MELCHER. That puts myself and my colleague, Senator BAUCUS, in a bind. We have to discuss that unitary tax proposal in the time between now and 4 o'clock on Tuesday.

Mr. PACKWOOD. I would suggest the Senator reserve his rights on it. I am going to support an effort if it is brought up to table the unitary tax, and there will be no hearings on the unitary tax at all if it is brought up.

Mr. MELCHER. I think it would turn everything topsy-turvy here, and we would not have any amendment offered. We would be talking about the very boring subject of unitary tax.

I ask the Parliamentarian, reserving my right to object again, Mr. President, we do not have to reserve rights to discuss an unpalatable amendment, do we? I am asking. We would not have to reserve rights to discuss at length the very unpalatable amendment?

The PRESIDING OFFICER. No Senator is guaranteed a right to debate in the face of an order for a vote at a time certain.

Mr. BYRD. Would the Chair respond?

The PRESIDING OFFICER. No Senator is guaranteed the right to debate a matter in the face of an order for a vote at a time certain.

Mr. BYRD. Unless that is included in the request. The request has not yet been agreed to.

Mr. MELCHER. Would the majority leader yield?

Mr. DOLE. I am happy to.

Mr. MELCHER. Will the Democratic leader repeat that?

Mr. BYRD. I understand the Chair to say when there is an agreed time for final vote no Senator can be guaranteed a time for debate prior to that final vote if he waits until that hour.

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Which is correct, and I am saying that the agreement has not been entered into yet. I believe the Senator can expect time to speak on this measure before the final vote. I think the request will protect him, and I will do everything I can. But the Senator's question right at this moment I think is being propounded in the context of a possible amendment by Senator WILSON dealing with the unitary tax. I think the Senator has indicated by the question, if that amendment is called up, the Senator and other Senators would want to talk I believe he said at 4 o'clock on Tuesday, which indicates to me that the agreement would not fly if that amendment is on the list.

But may I say this, that in the—if the Senator will yield—will the majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. BYRD. There is a provision in this agreement that if the unitary tax amendment is called up, and if Senator BAUCUS—and we may include Senator MELCHER—calls up an unlimited number of amendments, not any one of which would necessarily be germane or relevant which in effect means that the agreement would be off insofar as the final vote is concerned. I believe the Senator is protected.

Mr. MELCHER. I would like to be included with Senator BAUCUS on that.

Mr. BYRD. There is one final cautionary note. I would say, that if that unitary tax amendment were to be adopted, then the recourse of the Senators would be a filibuster to try to prevent passage of the bill. I do not think that would be successful. I hope that by this conversation it is indicated that if the unitary tax amendment is going to be called up there will be strong support against that amendment on both sides of the aisle so that this agreement which has been laboriously worked out will be kept and will be effectively effectuated.

Mr. DOLE. I can assure the distinguished Senator that is the case. We are not going to get into that thicket. We are about to put something together. I will move to table it myself.

Mr. MELCHER. I thank the distinguished majority leader and the distinguished Democratic leader.

The PRESIDING OFFICER. Is there objection to the request?

Mr. HEFLIN. Will the majority leader yield?

Mr. DOLE. I am happy to yield.

Mr. HEFLIN. Just out of caution, I would like to reserve 5 minutes to speak on a bill in the event, and this is a precaution.

Mr. DOLE. The Senator has two amendments.

Mr. HEFLIN. I am talking about the end, two or three have gotten 15 minutes at the end.

Mr. DOLE. I would be happy to include for the Senator from Alabama 5 minutes, and for the Senator from New York 10 minutes.

Good news! The unitary tax is off. Also take off the unlimited number of second-degree Baucus amendments to the Wilson amendment dealing generally with the same subject. We will make it possible for the Senator from Montana to sleep better tonight.

Mr. MELCHER. I thank the leaders.

Mr. BYRD. We agree to that.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. DOLE. The whole thing is agreed to. There will be no more votes tonight.

The agreement is as follows:

Ordered, That during the consideration of H.R. 3838, an act to reform the internal revenue laws of the United States, the following amendments be the only amendments in order, with the exception of the committee amendment.

Packwood: Technical amendment;

Melcher: Relating to capital gains in agriculture 30 minutes to be offered on Friday or Monday;

Chiles: Sense of Senate or other type relating to the budgetary effects of the tax bill;

Leahy: Satellite Communication Corporation;

Bumpers: Strike amnesty provisions in bill;

Baucus: 2d degree amendments relating to Bumpers amnesty amendment;

Moynihan: Relating to foreign area section 902/312;

Pryor: Modify installment sales land:

DeConcini: Installment sales;

Boren: Installment sales;

DeConcini: Technology transfer corporation;

Mitchell: Low-income housing, 1 hour debate, equally divided, to be offered Monday, June 23;

Matsunaga: Exclude income from convention and trade show activities;

Ford: Capitalization of utilities interest expenses;

Cranston: Computer software royalty income;

Cranston: Ordinary loss treatment for non-pro-rata stock surrenders;

Gore: Thermal steam transfer facility in Coffee Co., Tenn.

Quayle: Transition rule;

Durenberger: Great Northern Iron Ore Trust;

Heinz/Boren: depreciation preference;

Johnston: Transition rule for minority U.S. shareholders of a passive foreign investment company in existence on Jan. 1, 1986 and controlled by a foreign revocable trust;

Zorinsky/Boren: Internorth;

Byrd: UMWA pensions;

Byrd: Flood related;

Kennedy: Columbia Point;

Heflin: IRS/Commissions.

Heflin: Technical in nature;

Dole: Allow business employees deduction for seriously handicapped employees;

Mattingly/Stevens: 5-year moratorium on changes in tax law;

Stevens: Exempt native Alaskans from tax on reindeer income;

Stevens: 1984 Act, technical correction dealing with Alaskan Native Corporation's net operating losses;

Stevens: Amendments striking various provisions in the bill;

Stevens: Exempt native corporations from book income tax;

Stevens: Endicott Project;

Stevens: Alaskan Natural Gas Transmission System;

Stevens: Arco project north of Arctic Circle;

Domenici: Pot ash;

Domenici/Gramm: No use of tax revenues for deficit reduction;

Armstrong: Indexing capital gains;

Garn: Investment tax credit on copper;

Mathias: (Packwood to describe);

Abdnor: MASABA airlines;

McConnell: Pari mutuel betting;

Wilson: Child support;

Wilson: Irrevocable trust elections;

Wilson: Excise tax on pension reversion;

Wilson: Deductibility of expenses of the performing arts;

Wilson: Non-pro-rata stock surrenders;

Armstrong: Dealing with provisions on Pages 1026 and 1027 of committee report;

Armstrong: Miscellaneous regulated investment companies changes;

Roth: Methanol Blender;

Moynihan: Definition of Finance Company;

Moynihan: Hydro-Electric projects;

Moynihan: Supplemental Student loans;

Moynihan: FY partnerships;

Moynihan: Capital gains;

Moynihan: Common paymaster rule;

Moynihan: Hedging exemption;

Gorton: Research Co-ops;

Lautenberg: Insurance interests;

Long: Funeral insurance policy;

Grassley: Ruan trucking;

Grassley: Teleconnectors;

Heinz: Eqimark.

Ordered further, That any rollcall votes ordered on Friday, after the 4th rollcall vote of the day, or Monday, June 23, if H.R. 3838 is the pending business, be postponed to occur beginning at 10:00 a.m. on Tuesday, June 24, in the order in which the "yeas" and "nays" are ordered, excluding the vote on the committee substitute or final passage.

Ordered further, That final passage occur on H.R. 3838 no later than 4:00 p.m. on Tuesday, June 24, 1986.

Ordered further, That Senator DODD and Senator LEVIN have 15 minutes each on Monday and Tuesday to speak on the bill; that Senator MELCHER be recognized on Tuesday, June 24, 1986, for 15 minutes to speak on the bill; that Senator HEFLIN have 5 minutes to speak on the bill; that Senator MOYNIHAN have 10 minutes to speak on the bill; and that Senator HART have 5 minutes to speak on the bill.

Ordered further, That the first vote ordered on a previous day will occur at 10:00 a.m. on Tuesday, June 24, 1986, be 15 minutes in duration, and all subsequent such votes be 10 minutes.

The PRESIDING OFFICER. The time requested is agreed to.

Mr. DOLE. There will be no more votes tonight but if there are Members who can have amendments that can be taken I think the distinguished chairman, Senator LONG, will stay here for another 15 minutes maybe. We will come in tomorrow at what time?

Mr. PACKWOOD. I am ready. There is no limit on how long we can stay tomorrow night so long as we have Members whose amendments we think we can take. We will come in any time tomorrow morning. We will go on as long as we can take care of Members.

Mr. DOLE. I think we are on the bill by 10.

I alert Members that we will probably be on the bill by 10 o'clock. There may be votes starting at 11:30 to 12 o'clock. We hope to finish voting by 2 o'clock or 2:30. Then we will continue to work on the bill throughout the afternoon.

VIRGIN ISLANDS INHABITANTS

Mr. DOLE. Mr. President, the Finance Committee bill closes a loophole under the so-called mirror tax system which arguably exempts U.S. corporation qualifying as an inhabitant of the Virgin Islands from tax in both the Virgin Islands and the United States. It is unclear whether this is possible, but at least one case, *Danbury* v. *United States*, indicates that it may work.

The changes in the mirror tax system included in the Finance Committee, however, are fairly complex, and apply retroactively to all open years and may potentially have unintended adverse effects on inhabitants of the Virgin Islands. While I certainly support closing any loophole that would allow avoidance of both United States and Virgin Islands tax, I am concerned that the retroactive changes in the mirror system may create hardships for some taxpayers who, for example, have substantial operations in the Virgin Islands, rather than for those who just route their investment portfolios through the Virgin Islands to obtain a tax shelter.

Therefore, I had intended to offer an amendment to make the Finance Committee's rule on this issue prospective, with no inference as to what present law provides. However, since the House bill has a similar provision but with a prospective effective date, I have concluded that we should save time now by leaving resolution of this issue to conference. I would add, however, that the revenue impact for this amendment would have been negligible, according to the staff of the Joint Committee on Taxation.

PROBLEMS IN THE TAX REFORM BILL

Mr. HEFLIN. Mr. President, the Senate will soon vote on historic legislation to overhaul our Nation's tax laws. There have been many favorable remarks made about this bill during the Senate debate and I have agreed with much that has been said. There is no doubt but that the bill will go far toward truly reforming our tax system making it fairer and simpler for most taxpayers. However, this bill contains numerous deficiencies which I want to call to the attention of my colleagues. Hopefully, many of these problems will be addressed by the conferees on the tax reform bill.

One of the most glaring problems I find in this bill, and one that has only been slightly addressed on the floor of the Senate, is the creation of a conflict of interest between Internal Revenue agents and the people they are to serve. The bill establishes the Tax Administration Trust Fund which provides, basically, that a portion of the Internal Revenue Service's annual budget and budget increase would be provided by this fund. Moneys in the fund would come from penalties and interest revenue agents impose and collect from the taxpayers.

Since, in many instances, tax penalties are imposed or waived within the discretion of the Internal Revenue Service personnel, taxpayers will conclude that penalties will not be waived or lessened, in order to build up the fund.

A recent issue of the Forbes magazine discusses this apparent conflict of interest and quotes a former IRS official as saying that a major war already exists between the IRS and the public as to the imposition of penalties and interest, and concludes that the situation could become much worse if the IRS has a direct stake in the outcome and is, in effect, working on a "commission basis." In my judgment this is simply an issue of fairness and I would hope the conferees on the tax bill would strike this onerous provision from the final bill.

Another problem in the tax reform bill is the imbalanced treatment of capital gains and losses. In prior years capital gains were given special tax treatment which reduced the maximum tax rate on such gains to 20 percent. The current bill eliminates this special treatment and taxes capital gains at ordinary income rate. However, the deduction for capital losses is still limited to $3,000 per year for individuals. The bill should treat capital losses as ordinary losses. This would allow the full amount of the loss to be deducted in the year incurred. Without this, the bill changes the tax from one on income to one on receipts. It taxes the receipt of earned income with only a limited deduction for losses. In practice, this change will restrict the investment in startup companies and other high risk ventures. Capital gains and losses should be treated equally if we wish to tax capital gains fully, then the losses should also be fully deductible.

Another problem I see in this bill is its requirement that all personal service corporations convert to a calendar tax year. This provision would create compliance logjams for taxpayers, their lawyers and accountants as well as the IRS. By forcing all corporations to change their tax year to the calendar year it would become impossible for the tax advisors for these corporations to adequately prepare the tax returns for these companies. The only revenue resulting from this provision would be derived from forcing taxpayers to file their tax returns earlier than presently required. This one-time acceleration is spread out over the 5-year budget period. There is little or no continuing savings because there is no real abuse as suggested by the committee report. Neither is there a proper rationale for distinguishing service corporations from other corporations in this ill-conceived provision. Furthermore, since these corporations are presently required to file estimated tax returns then there is little or no income tax deferred by these companies.

I am also concerned with the retroactive effect of this bill. Historically, most pieces of enacted tax reform legislation have been written meticulously to apply only to future transactions, even where problems or loopholes were being corrected. Transactions that have been entered into prior to well-announced effective dates have been protected from changes. The reasons are simple: basic concepts of finance and equity to people who have acted in good faith and reliance on existing tax provisions, to insure that business will be able to plan long-term decisions, nonretroactivity has always been one of the basic rules of the game. The Senate Finance Committee's bill violates this longstanding principle of fairness and equity.

Yet another problem involves nondeductibility of an employee's business expenses. When individuals incur expenses in the production of income, the expenses should be deductible before taxing the income. The current tax reform bill before the Senate attacks this principle. Reducing the deduction for meals and entertainment will hurt the outside salesperson who, unlike the owner of a corporation, will not be reimbursed by his employer. The floor of 1 percent of adjusted gross income further reduces the deductibility of "ordinary and necessary expenses" investment expenses, professional dues, small tools purchased by the construction worker, and professional magazines purchased by the college professor are all necessary expenses incurred in the production of income. These will not be deductible against income which was generated by these expenses. Accountant and attorney fees incurred in income-tax preparation will not be deductible. Will this encourage taxpayers to see professional help when needed? I think not. This will lead to greater noncompliance. If we must reduce individuals deductions, are we attacking the correct one? The income-producing deductions as opposed to the voluntarily deductions? No one can argue that there are no abuses in these areas, but this is not the way to achieve reductions of these abuses? I think not. The taxpayers we are hurting are the very ones who need help—middle income Americans.

Mr. President, although the members of the Finance Committee deserve our congratulations for their monumental effort at reforming our tax system I do believe the provisions I have discussed today are problems which must be changed. I urge the conferees to address these issues and take the steps necessary to correct them.

RETROACTIVE REAL ESTATE

Mr. KASTEN. Mr. President, I am deeply concerned about the provisions in this bill which have the effect of making parts of this law retroactive.

As one of the leading voices in the Senate against making retroactive changes in the Tax Code, I believe there are some provisions of this law which unfairly single out a few individuals to pay an especially heavy burden.

The only truly equitable way to change our law is to make it prospective. We should not penalize those who have made decisions in good faith that the law will not be changed retroactively. We should not penalize those who have invested their money where Congress encouraged investment.

Specifically, I am deeply concerned about some of the transition rules for the real estate industry and the ability of those involved in active real estate investments to write off actual cash losses.

The people who are in the business for legitimate business reasons, and not as a tax dodge, should not be singled out by rules that apply to no one else.

Mr. President, over a third of all Senators have already joined me by cosponsoring S. 2108, a bill to prevent retroactive changes in the Tax Code.

We were successful in making most of the provisions of the Finance Committee bill prospective. For that reason we have not pressed S. 2108. I believe it is clear, however, that there is very strong sentiment in the Senate that this bill should not have retroactive effects.

It is my hope that during the Conference with the House that these provisions can be favorably resolved.

The cosponsors of S. 2108 are:

Senators Abdnor, Boren, Cohen, D'Amato, Denton, Domenici, East, Grassley, Hatch, Hecht, Heflin, Hollings, Murkowski, Pressler, Simon, Symms, Trible, Zorinsky, Andrews, Cochran, Cranston, DeConcini, Dodd, Boschwitz, Garn, Gore, Hawkins, Heinz, Helms, McClure, Nickles, Quayle, Specter, Thurmond, Wilson.

Mr. HATCH. Mr. President, I want to applaud the floor managers of H.R. 3838, for their courage and wisdom in bringing true tax reform before the Senate. Because of their leadership, this body may be able to achieve a goal many of us thought unreachable only a short time ago.

As chairman of the Committee on Labor and Human Resources, I must express some reservations about one important piece of the bill, the 150 odd pages dealing with employer-sponsored retirement and employee benefit plans. I am concerned that with regard to several of the provisions in this area, we are being asked to leap before we have a clear understanding of just where we will land.

For example, concerns have been raised that we unintentionally may be limiting the actual funding of pension plans beyond what we realize and that we may be discouraging defined benefit plan formation in small businesses.

There is also concern that we may not totally grasp all of the consequences of several of the proposed policy changes. For example, we may be reducing too drastically the benefits available to early retirees at a time when early retirement is so prevalent and often encouraged in the labor force.

Mr. President, I have no intention at this time of proposing any substantive changes to H.R. 3838. Overall, the bill represents a constructive improvement. But I do hope my colleagues will consider one recommendation. Since the passage of the Employee Retirement Income Security Act [ERISA], Congress has changed Federal retirement policy in what often seems to be a piecemeal fashion. In fact, we have changed the law in this area five times in the last 4 years. I will admit that as chairman of the Committee on Labor and Human Resources, I share some responsibility for this pattern.

A better approach, I believe, would be for Congress to reconsider the basic purpose of our pension policies, take the necessary time to understand the problems facing both single and multiemployer plans, and then work to develop a comprehensive solution. By doing so, we can provide plan sponsors with more reliable guidance and participants and beneficiaries with a more secure future. But if we continue in our current pattern, we could begin to discourage the continued maintenance of pension plans and plan formation.

Mr. KASTEN. Mr. President, I rise to comment on one aspect of the tax reform bill not before the Senate that is of special interest to many of my constituents. I refer to the provisions that effect agriculture.

Wisconsin is the Nation's eighth largest farm State. It has about 80,000 farms, of which roughly 35,000 are full-fledged commercial operations. Agriculture in Wisconsin is the foundation for an agribusiness industry that encompasses fertilizer and machinery manufacturers, wholesalers and retailers, businesses in small towns all across the State, and almost as many cheese processing plants as there are in all other States combined.

Agriculture provides Wisconsin with tens of thousands of jobs. The farm is the foundation of much of our economy—and is an important part of our heritage as well.

Mr. President, the farms in Wisconsin are almost all small to mid-sized family operations. On these farms, the farm provides farm families with most of their income and the family itself provides most of the labor.

On a dairy farm (and most commercial farms in Wisconsin are dairy farms) that labor must be supplied 7 days a week, 365 days a year. Crop plantings can be delayed; harvests can be adjusted; but cows must be milked every day.

These farm families face a lot of competition these days. They face competition that has in large measure been generated by the Tax Code that we are now attempting to reform. The current Tax Code is generous to agriculture. I believe it is excessively generous.

Incentives to increase capital investment are good—they are necessary—for most of the economy, but this is not true for agriculture. Agriculture has too much productive capacity now. This excessive productive capacity has driven down prices for virtually all commodities, but especially for meat and milk; the foundation of Wisconsin's agriculture.

The incentives we have for increased capital investment and additional expansion in agriculture are offered across the board, to everyone. But in the nature of things these incentives are most useful to farmers—and nonfarm investors—who have money to spend on buying additional farmland, breaking out new farmland, and building new farm structures and livestock.

The vast majority of my farm constituents do not have money to burn, even in good times. In this time of depression in agriculture, Wisconsin family farmers are barely getting by.

Subsidizing unneeded additional capital investment in agriculture is not just bad policy, it is grossly unfair to thousands of family farmers whose whole way of life is bound up in the land.

Mr. President, the tax bill which we have been considering over the last 2 weeks makes great strides toward rectifying this mistaken, unfair trend in the Tax Code. On the whole, the Finance Committee bill, if enacted, would be a boon to family farm agriculture.

By lowering tax rates and coming down hard on tax-shelter farming, the Finance Committee bill gives a break to family farmers, while discouraging excess investment in farming.

It does this in several ways.

First, by lowering tax rates, the Finance Committee bill would drop many farmers from the tax roles entirely, at least until the farm economy turns around. In addition, the increase in the personal exemption to $2,000 will benefit thousands of farm families, as will the larger standard deduction—$5,000 for married taxpayers filing jointly, $4,000 for heads of household.

Second, the Finance Committee bill would allow farmers and other self-employed persons to deduct one-half of their health insurance premiums. I believe this overdue step represents equity for farmers who have long been burdened with higher health insurance premiums than most workers.

Third and perhaps the most important way in which this tax reform legislation helps the family farmer is this: This bill takes bold steps to remove from the Tax Code incentives for excess capital investment and expansion in agriculture.

The large operations—the 1,000-cow dairy farm factories, the 10,000-hog confinement operations, the gigantic investor-finance cattle feedlots that have sprung up in some part of the country in recent years—will no longer have the multiple advantages over the family farmer that we have provided through the Tax Code.

All this means is that people who wish to invest in agriculture to make a profit may still do so. We want them to do so—that is what the free enterprise system is all about.

But those who have invested or are thinking of investing in agriculture because of the tax consequences of such investment will find that farming the Tax Code no longer pays.

The Finance Committee bill does this in the following ways:

The repeal of the investment tax credit removes a tax break that has been used most heavily by large livestock/oriented farms. Though the I.T.C. subsidies of up to 10 percent of cost have been granted to buildings, milking parlors, machinery, and other capital investment—and it's not the hard-pressed family farmers who have been making all these investments, it is the operators of the very largest farms. Just as in our farm programs, the largest subsidies have been going

to those farmers who do not need the help.

Scrapping the I.T.C. is thus a step toward a level playing field for the family farmer.

So too is the provision in the Finance Committee bill that would lengthen the depreciation schedule on single-purpose farm structures from 5 years to 10 years. A 10-year write-off is not ideal—I would prefer the 13-year depreciation period included in the House tax bill.

But longer writeoffs for milking parlors, hog confinement facilities, and similar structures are absolutely necessary to deter the addition of still more excess, price-depressing productive capacity to agriculture.

The most remarkable step the Finance Committee bill takes to help the family farmer is the set of provisions restricting the deductibility of passive losses. Under these provisions, passive losses would be deductible only from income derived from similar activity.

Though these provisions would be phased in over 5 years, they represent a massive blow to tax-loss farming operations. I remind my colleagues once again that these tax-shelter operations are concentrated in the livestock sectors of the farm economy.

The restrictions on passive losses removes perhaps the strongest incentive for doctors, lawyers and the idle rich to dump money into tax-loss cattle-feeding and drylot dairy operations—a long-overdue break for the family farmers now forced to compete with such operations.

The Finance Committee bill by repealing the deduction for land clearing expenses, general earth-moving, and the cost of land preparation for center-pivot irrigation, also removes incentives to bring new land into production—an important step at a time when there is too much land being farmed already.

Other provisions in this legislation that remove incentives to crop new land would tax proceeds from the sale of highly erodible lands and converted wetlands as ordinary income—not as capital gains. Further, the Finance Committee bill would allow expenses for soil and water conservation to be deductible only if they apply to activities that are part of a plan approved by the soil conservation service.

These provisions are worthy of special note, because they complete the work that the Senate started in the conservation title of the farm bill last year. That title denied farm program benefits to farmers who break out highly erodible land or convert wetlands to cropland. In addition, the conservation title required all farmers now cropping highly erodible land to have a conservation plan, approved by the local soil conservation district, by 1990, and to implement that plan by 1995.

It has been clear to this Senator for some time that the tax benefits of speculating on the sale of "improved," highly erodible cropland and wetlands were at least as important as the availability of farm program benefits as a motivation for plowing up such land.

In the conservation title of the farm bill we barred farmers who break out highly erodible land or fill in wetlands from getting deficiency payments and Farmers Home Administration loans. In the Senate Finance Committee tax reform bill we ensure that the Government will not be encouraging this kind of thing through the Tax Code.

Mr. President, these provisions of the farm bill are not just important to today's family farmers—they represent a solid victory for the cause of conservation. In a very real sense, this is everyone's cause—ours, our farmers, and generations yet to come as well.

Mr. President, I do not contend that this bill is perfect as it relates to agriculture. There are some things I wish we could add.

For example, the bill could have gone farther to discourage excess investment in agriculture by placing limits on cash accounting for the largest farms.

By allowing even huge corporate-type operations to deduct expenses immediately, and not taxing increases in their inventories, the Senate bill misses an opportunity to stop an abuse of the Tax Code that encourages large farms to get even larger.

Cash accounting was originally allowed for farmers because it was felt that they lacked the resources to handle the paperwork burden of accrual accounting. This argument is still valid for many family farms; and for these farms, cash accounting remains an important financial management tool.

But for operations like the dairy farm factories planned by the Irish firm Masstock International in Georgia, or for an outfit like Perdue Farms—estimated sales: $700 million—the argument is ridiculous.

The Finance Committee bill does disallow deductions for prepaid expenses above 50 percent of all cash method expenses. While this is a good idea, the 50 percent figure is too high to be effective.

The bill also errs in continuing to allow immediate deductions of expenses for raising livestock—as well as orchards and vineyards. Immediate deductibility of preproductive expenses is of some use to midsized family farmers. But it is of far greater use to the very largest farms. The House provision, which requires that many of these expenses be capitalized, is preferable.

A final note on this tax bill's impact on agriculture: by prohibiting any farmer to have more than $250,000 in tax-exempt financing obtained through industrial development bonds for the purchase of depreciable agricultural property, this bill accomplishes the purpose of legislation that I introduced last April.

That legislation, S. 2273, would have barred foreign firms from access to tax-exempt financing for farming operations in this country. The Finance Committee provision allows such a low amount of tax-exempt financing to be available that no foreign firm of any size would derive any benefit from pursuing such financing to help them start farming operations in this country.

The dairy farmers of my State were rightly outraged by the news last winter that the Irish firm Masstock International was planning to invest $35 million—an enormous sum by the standards of agriculture—to start up to 10 2,000-cow dairy operations in central and southern Georgia.

They believe—and I agree—that it is ludicrous to have a dairy program designed to pay some farmers to leave the industry—that is, the whole-herd buy-out, while Federal tax policy works in the other direction, by encouraging and actually subsidizing foreign investors in their efforts to expand milk production.

Mr. President, the farmers of my State are not antiforeign by any stretch of the imagination. The key consideration for them is simple—we have more than enough milk already in this country and we don't need the Government subsidizing the production of still more milk through the Tax Code.

I am pleased that in this respect and others the Finance Committee bill goes so far to discourage unneeded capital investment in agriculture. I believe history will record that we did more to help family farmers in this tax bill than we did in any of the farm bills Congress has passed recently.

So I am delighted to support the agriculture-related provisions of this tax bill, and I hope the Conference Committee will as well.

Mr. MURKOWSKI. Mr. President, as I have said before I support this tax bill because it in large part accomplishes the goal of simplifying our tax laws and makes them fair and equitable to all Americans.

As a number of Senators have recently stated, certain aspects of the bill will apply major new tax law changes to business transactions entered into before the enactment of this bill. In particular, the Senate Finance Committee chose to:

Retroactively repeal the investment tax credit to January 1, 1986; make losses from existing passive real estate investments nondeductible; apply new depreciation methods to existing investment properties; and eliminate the

tax-exempt status of certain bonds already issued.

Mr. President, let me be clear. I support the policy behind these changes. Business decisions should be made on the basis of economics, not tax considerations. These major changes to established tax rules are consistent with that policy. Nevertheless, the retroactive application of these new major tax law changes to existing investments creates specific problems and I hope the chairman will make every effort to remedy this situation in the conference committee or in a possible committee amendment made at the conclusion of debate by making these changes apply to future transactions.

Legally binding transactions entered into in good faith reliance on existing tax laws have traditionally been protected from future tax law changes. Not only was this done in the interest of fairness, but also to assure that people in business could feel confident to make long-term business decisions.

For example, when the Tax Equity and Fiscal Responsibility Act of 1982 changed the way corporations account for interest on obligations after 1982, it specifically exempted obligations entered into before that date. Tax bills in 1984, 1981, 1980, 1976, and 1954, among others, recognized this basic principle of responsible change.

I recognize that the new tax bill attempts to mitigate existing investments by phasing in the repeal of the investment of tax credit, nondeductions for passive real estate losses, and new depreciation methods. And, I am pleased that the committee tried to recognize that changes in the tax-exempt status of some bonds should apply only to those bonds issued after the enactment of this bill. But, let me illustrate two specific concerns that I hope the Finance Committee will address.

In February 1986, the city of Anchorage, AK, issued $57 million in tax exempt bonds to buy pensions for its municipal employees. However, 1 month later on March 14, 1986, the city learned through a joint statement by Chairman PACKWOOD and Chairman ROSTENKOWSKI that the new pension bonds would be affected retroactively in proposed tax legislation. In the Senate tax bill, the city's pension bonds stand to lose their tax-exempt status.

Mr. President, this example points out the basic problem of retroactivity: Anchorage complied with existing tax law all the way down the line in preparing to issue its bonds in 1985. Immediately before Anchorage went public, the House eliminated the tax-exempt provision—but made it retroactive, thus undoing all the proper steps Anchorage had taken to comply with the law. Fortunately, the House corrected the problem with a transition rule and we need to maintain this rule in conference or to include it in a Senate Finance Committee amendment should the committee propose an amendment to this bill following the tax debate.

Another example of problems caused by retroactivity involves contracts between United States shipping lines and the Japanese to build ships to transport cars to the United States. I have pushed this matter hard with the Japanese—through my sense of the Senate resolution, Senate Resolution 223, and through direct discussions at the highest levels of the Japanese Government.

The car carriers mean additional jobs for U.S. seamen. Four agreements have been reached to date with Toyota, Nissan, and Honda. United States shipping lines will build the ships in Japanese yards, and the ships will be crewed by United States seamen. An average of 20 new jobs will be created with each vessel.

These carrier contracts make great sense: We are Japan's best automobile customer—over 2.3 million Japanese cars will be imported to the United States this year. For the first time we are making progress in getting a portion of the transportation service trade for these vehicles—and we want more car carriers built and manned by U.S. crews.

The United States shipping companies have been negotiating in the free marketplace with the Japnaese: None of the car carriers will receive a dime of subsidy from our Government. The cost of each contract ranges between $20 and $25 million, and I know for a fact that the Japanese have negotiated tight deals.

But, Mr. President, I am informed that the U.S. shipping lines now will be seriously affected under the Senate tax bill because of the retroactive application of the investment tax credit rule. The shipping lines spent months negotiating these agreements with Japan, and the negotiations were based on existing tax law. Suddenly, after the agreements are approved, the shipping lines find that they will not realize the full value of their negotiated agreements.

The investment tax credits for the shipping lines were integral to these agreements. The credits were to be used to offset costs of providing liability coverage to the U.S. crews that will be used to man the vessels.

This retroactive application of our tax law could hurt U.S. business and could cost maritime jobs at a time when we must find jobs, not lose them.

Mr. President, the issue before us is not whether to allow new changes in our tax laws but whether we should affect those who have already entered into existing transactions.

I ask for nothing more than that stated by the chairmen of the Senate Finance Committee and the House Ways and Means Committee on March 15, 1985, in a joint statement in preparation for congressional consideration of tax reform proposals as follows:

> Any changes contemplated by the current proposals will be prospective in their application . . . we believe that it is important to try to provide a measure of certainty to the marketplace as to the tax treatment of completed transactions.

The new tax bill should protect not undermine those people who have made good faith commitments under current tax laws. Mr. President, I am not inclined to support an amendment on retroactivity, should one be offered this week. I want to support the chairman's approach of having the strongest possible Senate bill when he begins to negotiate with House conferees. However, I urge the Finance Committee and Senate conferees to consider those owners, investors, and citizens who have made long-term lawful commitments.

● Mr. PACKWOOD. I would like to ask the Senator from Montana to clarify one thing for me. Isn't it true that the amendment addresses the use of land after redevelopment and provides that after redevelopment, the land may not be used for farming? The amendment does not restrict what purposes land in a blighted area is used for before redevelopment. Thus, if the general conditions for designating blighted areas are satisfied, some undeveloped parcels, formerly used for agricultural purposes, may be included in a blighted area.

● Mr. BAUCUS. Yes.●

TRANSITION RULE FOR MINORITY U.S. SHAREHOLDERS OF A PASSIVE FOREIGN INVESTMENT COMPANY IN EXISTENCE ON JANUARY 1, 1986 AND CONTROLLED BY A FOREIGN REVOCABLE TRUST

● Mr. JOHNSTON. Both the House and Senate Finance Committee versions of H.R. 3838 contain provisions requiring U.S. persons who own shares in passive foreign investment companies [PFIC's] to recognize currently their pro rata share of the PFIC's income for the year, regardless of how small their interest in the PFIC may be. These minority shareholders must either pay tax currently, or defer the tax and pay interest to the Government as consideration for the right to defer tax payment.

The apparent impetus behind the PFIC proposal was a perceived abuse involving U.S. control of many PFIC's. The proposed PFIC rules would, however, improperly penalize current minority U.S. shareholders who have invested in reliance on current law and who do not control—by vote or value—their PFIC.

The following transition rule would amend section 925(d) of the Senate Finance Committee's version of H.R. 3838 to provide existing—as of January 1, 1986—minority U.S. sharehold-

ers of a PFIC which is controlled by a foreign revocable trust an additional 5 years to phase into the new PFIC rules.

TRANSITION RULE—AMENDMENT TO SECTION 925(D)

Effective Date.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 1985. *However, in the case of a passive foreign investment company formed before January 1, 1986 if on January 1, 1986 and continuously thereafter a majority (by vote and value) of the stock of such company was held directly (or indirectly through applying paragraph (2) of section 958(a)) by a revocable trust created February 16, 1981, by a nonresident alien of the United States, the amendments made by this section shall apply to taxable years beginning after December 31, 1989.*●

● Mr. METZENBAUM. Mr. President, earlier today the Senate voted to support the ESOP provisions in this bill. My vote should not be interpreted as supporting every ESOP provision in this bill. For some time I have been very concerned about protecting the rights and interests of workers in ESOP transactions.

The legislative history under title I of ERISA requires that leveraged ESOP transactions be given special scrutiny under the fiduciary rules in title I to ensure that the interests of participants in the ESOP be protected. No valuation methodology or construct should be applied in the determination of fair market value that would permit an ESOP to pay more for employer stock than a third-party investor in an arm's-length transaction, or that will permit any other party in the transaction to receive more than that party would be entitled to receive in an arm's-length arrangement. For example, if an ESOP were to purchase all of the common stock of an employer, the ESOP should pay no more for the common stock than what the common stock could be sold for to an arm's-length investor.

Recently, in several cases in which fairness to the participants in the valuation of the ESOP stock was at issue, the Department of Labor has intervened to protect participants' interests. Naturally the investment bankers who put together these transactions were upset.

The Finance Committee has included in its bill language purporting to express the concern of Congress that the Federal agencies that enforce ERISA are treating ESOP's as conventional retirement plans and thus thwarting their use as corporate financing tools. However, such a statement of concern cannot be construed to create new authority on the specific issue of how the stock ought to be valued in these transactions.

I know the language included in the Finance Committee bill before us today was not intended to prevent the Department of Labor from exercising its legitimate and congressionally mandated responsibility to protect the interests of ESOP participants. Indeed, any attempt to so deprive the Department would be both an inaccurate statement of congressional intent and an unsuccessful attempt to circumvent the legitimate jurisdictional prerogatives of the Labor Committees of both Houses. Moreover, no hearings, studies, or systematic analyses of the position of the regulatory agencies support the view that the DOL regulatory policies have interfered with capital financing transactions.

Nearly 3 years ago, the Department of Labor become more active in enforcing its responsibilities under title I with respect to the use of ESOP's. This effort appears to have been, at least in part, a response to a report of the General Accounting Office issued in 1980. In that report, the GAO concluded that the Department of Labor needed to enforce title I more aggressively to fulfill its statutory mandate of protecting plan participants. Since then, the Department has initiated a number of investigations concerning the use of ESOP's, resulting in the issuance of several enforcement-related opinion letters establishing procedural and substantive precedents under title I.

Congress can hardly relax certain of those precedents without first conducting a full and open examination that focuses on the enforcement positions of the Department of Labor as well as the Internal Revenue Service. It seems apparent that the growing use of ESOP's could have a substantial effect on the economy, tax revenue, and employee benefits. Before we continue to throw tax breaks at ESOP's as the Finance Committee has done in the bill before us, serious attention should be given to the impact on plan participants of the previously granted incentives to sellers.

It is clear that interpretations of the fiduciary responsibility provisions of title I should stem from title I and its legislative history and not from any statement of general corporate finance objectives. The aforementioned provisions exclusively govern the conduct of fiduciaries in the determnination of fair market value of assets acquired by ERISA-covered plans. Title I of ERISA applies these fiduciary standards not only to retirement plans but to all employee benefits plans, including health insurance plans as well as pension plans. Thus, any argument that the fiduciary rules should be different for ESOP's because they are not "conventional retirement plans" seriously mistates current law.

The Committee on Labor and Human Resources has jurisdiction over title I, including the use of ESOP's and the responsibilities of fiduciaries with respect to valuations under ERISA. Comprehensive hearings and oversight findings by this committee would obviously have to precede any new statements of congressional intent with respect to those issues.

No one disputes the value of the ESOP as a corporate financing device. However, it is equally clear that the ESOP's legal status as an employee benefit plan subject to the fiduciary requirements of title I of ERISA requires special care on the part of plan fiduciaries when financing transactions are put together.●

□ 2130

ROUTINE MORNING BUSINESS

Mr. DOLE. Mr. President, I ask unanimous consent that there now be a period for the transaction of routine morning business, not to extend beyond the hour of 9:45 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, there will be no further action on the bill tonight.

THE ADMINISTRATION SPEAKS ON ARMS CONTROL

Mr. DOLE. Mr. President, within the past 24 hours, the President and two of his principal national security advisers—the Secretaries of State and Defense—have made important statements on U.S. arms control policy.

THE PRESIDENT'S SPEECH

The President, of course, spoke today at Glassboro, NJ, which 19 years ago was the site of the Johnson-Kosygin summit. In his Glassboro speech, the President reaffirmed his commitment to a dual policy of: First, restraint in developing new nuclear weapons, and second, a continued search for a nuclear arms reduction agreement. Implicitly taking note of his recent decision on SALT, the President urged that we "leave behind efforts to seek only limits on the increase of nuclear arms, and seek instead actual arms reductions."

Giving substance to this renewed commitment, the President welcomed the most recent Russian arms control proposal in Geneva, noting that—while we cannot accept it in toto—it "could represent a turning point" and create "an atmosphere • • • that will allow for serious discussion." The President also stretched out a hand of cooperation to Soviet General Secretary Gorbachev, urging that agreement be reached soon on the timing of the next summit.

LETTER FROM SECRETARIES SHULTZ AND WEINBERGER

Nearly simultaneously, I have received a second important statement of administration policy in a letter from Secretary of State Shultz, and

Secretary of Defense Weinberger. Their letter urges that the Congress not take any precipitous action on the SALT compliance question which would undermine our country's negotiating position in Geneva, or at a summit, should the Soviets respond positively to the President's newest summit initiative.

The Shultz-Weinberger letter is a concise and cogent argument against the kind of action that is already under consideration in both Houses of Congress—action which would force the President to comply with the provisions of a treaty which was never ratified; which would have expired had it been ratified; which the Soviets have violated, and are continuing to violate every day; and which has served as a framework for a massive Soviet arms build-up, not a blueprint for the reduction of nuclear arms, which is the real goal of arms control.

Let me quote one passage which expresses the essence of the message in the letter:

> We are writing to express our deep concern regarding congressional efforts • • • which would have the effect of undercutting the President's May 27 decision on U.S. interim restraint policy, and would signal the Soviets that they need not take seriously their arms control obligations.

THE ROAD TO NUCLEAR ARMS REDUCTIONS

Mr. President, I urge all of my colleagues to give the most careful consideration to the President's speech, and to the Shultz-Weinberger letter. By pursuing the course the President has laid out, and heeding the very sound advice from these two senior Cabinet members, we will help maintain the strongest possible negotiating posture in Geneva, and in our other contacts with the Soviet Union. And we will maximize the chances we have to achieve real nuclear arms reductions.

Mr. President, I ask unanimous consent that the full texts of the President's speech and the Secretaries' letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TEXT OF REMARKS BY THE PRESIDENT TO THE 1986 GRADUATING CLASS OF GLASSBORO, NJ, HIGH SCHOOL, JUNE 19, 1986

Governor Kean, President Beach, Superintendent Mitcho, Principal Holland, ladies and gentlemen—and especially you, the Glassboro High School Class of 1986, it is an honor to join you today for this commencement ceremony—an event that marks your coming of age and means so much to you and your families. And I know you want to join me in congratulating your principal, Roy Holland, on 11 years of outstanding service.

But what I have to say today I have come to say to you, the students of Glassboro High School who are about to graduate. Mothers and fathers, families and friends—you have our permission to eavesdrop. But you must understand that this is between us—one who has seen more than seven decades of American life, and the bright young people seated before him, who have not yet seen all of two.

Glassboro High School Class of 1986: If we had time today, I might talk with you about good citizenship, all that we've been trying to achieve in Washington, or even the things I think we both enjoy—things like football games and going to the beach.

It's hard for you to believe that grownups, parents, etc., can understand how you feel and what it's like to be your age. When you get to be parents yourselves, you'll be surprised how clear your memories will be of these days at Glassboro High. You'll remember how you felt about things, about successes, and, yes, disappointments. You'll discover as you get older that certain things are so much a part of your life that you'll remember them always, and high school is one. But as I was saying, it's in the very nature of time that it runs on more quickly than any of us would wish, and I must compress all that I want to say into a few brief and fleeting minutes. Perhaps that in itself represents one of the lessons that I can impart—the preciousness of each moment.

And if you are ever a commencement speaker, try to keep in mind the importance of brevity in a speech. You know every generation is critical of the generation that preceded it and feels it must discard many of the mores and customs of those who had gone before. Our generation felt that way and so will yours. But in casting aside the old, don't throw out the values that have been tested by time just because they are old. They are old because their value was proven over the years and, yes, the centuries.

Now, I know that in recent days you've been bidding farewell to your teachers and friends, and I wonder whether you've noticed as you've done so that this time of year tends to bring out some old and familiar phrases—phrases like, "The future belongs to you," and, "You are the hope of tomorrow."

I must tell you that each of these phrases speaks deep truths: You are the future. Oh, the phrases may sometimes sound worn; perhaps because you have already heard them so many times. And they can seem inadequate to your parents and me because we want to tell you all that we have learned. We want to paint for you our own experience so vividly that you will be able to avoid our heartaches while you double and redouble our joys. Then we find we have nothing at our disposal but words, weak and feeble instruments, that cannot possibly carry the full weight of our meaning.

Still we must try—every modicum of knowledge that can be truly and rightly transmitted from one generation to the next can prove invaluable. So it is that I want to speak to you about this Nation of which you will so soon become the leaders—in particular, about those qualities of our national life that we Americans have always cherished in our own country and hoped to extend to all the world: freedom and peace. Perhaps you could think of our talk on this matter as writing a high school essay, an essay on peace—one last assignment before we let you go.

English teachers sometimes suggest opening essays vividly, with a dramatic scene or story that helps to set the tone. It so happens that you and I have just such a dramatic story at hand. For 19 years ago—the very year before most of you were born—Glassboro received a visit from the President of the United States.

In June of 1967, President Johnson flew from the White House to Glassboro—just as I have done today—to hold a summit meeting with Soviet Premier Kosygin. The meeting was scheduled to last 1 day. But the two men talked for more than 5 hours, then held a second meeting 2 days later. If you were to research the meeting in your school library, you would find that U.S. News wrote, "Among the problems they discussed were some of the world's biggest: Vietnam, the Middle East, and the proliferation of nuclear weapons."

Today, historians have concluded that the Glassboro Summit was not, in fact, one of the most momentous—no major breakthroughs were made or agreements reached. Nevertheless, the two men met. They were frank. They worked to understand each other and to make themselves understood. In this alone, I would submit, they taught us a great deal.

Let us then remain mindful of that Glassboro Summit of 19 years ago. And let us remember that as we look back upon the Glassboro Summit, others—perhaps 19 years in the future—will look back upon us. It is my fervent hope that they will say we worked to break the patterns of history that all too often resulted in war—that we reached for accord, that we reached for peace. Hope finds its expression in hard work, so let us move on to the body of our essay and the tasks of analysis and organization. Let us begin by considering our attitude toward our country and ourselves.

Certainly the American story represents one of the great epics of human history. Yet ours is a story of goodness as well as of greatness. After World War II, our goodness received a dramatic manifestation in the Marshall Plan—the vast program of assistance to help war-ravaged nations recover from World War II. And we can be proud that we helped restore not only our allies but those who had been our enemies as well. Pope Pius XII said of us then, "The American people have a genius for splendid and unselfish action and into the hands of America, God has placed the destinies of afflicted humanity." And in our own times, the United States continues to bear the burdens of defending freedom around the world. Listen to the words of former Prime Minister of Australia John Gorton: "I wonder if anybody has thought what the situation of comparatively small nations would be if there were not in existence the United States . . . if there were not a great and giant country prepared to make those sacrifices."

Do we have faults? Of course. But we have as well the courage and determination to correct them. Consider the darkest blot upon our history, racial discrimination. We fought the Civil War and passed the Thirteenth and Fourteenth Amendments to bring slavery to an end. Discrimination still made itself felt, but so did the American sense of decency and this ultimately gave rise to the Civil Rights movement. Sweeping legislation was passed to ensure that all Americans, regardless of race or background, would be able to participate fully in the life of the Nation. Today bigotry has been beaten down but not yet destroyed; it falls now to you to carry on the battle. So fight racism. Fight anti-Semitism. Fight in all its variations the bigotry and intolerance that we Americans have worked so hard to root out.

I make much of all we have done to combat discrimination in our country because it seems to me of central importance

to our essay on peace. Here in this green and gentle land people of all nations—people of all races and faiths—have learned to live in harmony to build one Nation. Nor is the story over. Listen indeed to this roll of some of your schoolmates: born in India, Sajad and Khatija Bilgrami; born in China, Wun Ting Geng; born in Japan, Tomoko Sasaki; and born in Laos, Bounmy Chomma, and Rasami Sengvoravong and Sisouva Phatsodavong.

If ever in coming years you grow disillusioned with your Nation—if ever you doubt that America holds a special place in all the long history of humankind—remember this moment and the names I have just read. Then you will understand—then you will find new strength—then you will know how it is that we Americans can look to all the other peoples of this planet with self-confidence and generous friendship.

Call it mysticism if you will; I have always believed there was some divine plan that placed this great land between the two oceans to be found by people from every corner of the Earth who had that extra love of freedom and that extra ounce of courage to leave friends and homeland to seek this blessed place.

This brings me to the international scene and our relations with the Soviet Union. It is important to begin by distinguishing between the peoples inside the Soviet Union and the government that rules them. Certainly we have no quarrel with the peoples—far from it. Yet we must remember that the peoples in the Soviet Union have virtually no influence on the government.

There's a little story that indicates what I mean. It seems an American and a Soviet were having an argument about who had more freedom. "I can march into the White House," the American said, "find the President's office, and say, 'President Reagan, I don't like the way you're running our country.'" The Soviet said, "Well, I can do that." The American said, "You can?" He said, "Yes, I can walk into the Kremlin, to General Secretary Gorbachev's office, and say, 'Mr. General Secretary, I don't like the way President Reagan's running his country.'" You know, I told that story to Mr. Gorbachev in Geneva. Thank goodness he laughed.

We must remember that the Soviet government is based upon and drawn from the Soviet Communist Party—an organization that remains formally pledged to subjecting the world to Communist domination. This is not the time to delve deeply into history, but you should know that emergence of the Soviet Union is in many respects an expression of the terrible enchantment with the power of the state that became so prominent in the first half of our century. In his widely-acclaimed book, *"Modern Times,"* Paul Johnson has argued just this point—that modern ideologies had exalted the state above the individual.

This rise of State power affected my life as it did the lives of many of your parents and nearly all your grandparents. In the late 1920's, I graduated from high school full of hope and expectation—like you today. Then, just as I had established myself in a career—just as my generation had established itself—we were at war. We fought valiantly and well, but not without a sense of all that might have been. In the end representative government defeated statism—indeed, Japan, Germany, and Italy, once our deadly enemies, all soon became thriving democracies themselves and are now our staunch allies. But not the Soviet Union. There statism persists.

What then are we to make of the Soviet Union? My own views upon the character of the regime are well-known, and I am convinced that we must continue to speak out for freedom, again and again making the crucial moral distinctions between democracy and totalitarianism. So, too, I am convinced that we must take seriously the Soviet history of expansionism and provide an effective counter.

At the same time, we must remain realistic about and committed to arms control. It is indeed fitting to pay particular attention to arms negotiations in these days, for if the Soviet Union proves willing, this can represent a moment of opportunity in relations between our nations.

When I met Mr. Gorbachev last November in Geneva, he and I agreed to intensify our effort to reduce strategic arms. We agreed on the next steps—negotiating a 50 percent reduction in strategic nuclear forces, and an interim agreement to cover intermediate-range missiles. And we both spoke of the ultimate goal of eliminating all nuclear weapons.

By November 1st, we had presented new strategic arms reduction proposals designed to bridge the gap between earlier Soviet and American proposals. Our proposal would have achieved a 50 percent reduction in strategic nuclear forces in a manner both equitable and responsible. Then, in mid-February we proposed a detailed, phased approach for eliminating an entire class of weapons—the so-called long-range intermediate range weapons, or I.N.F.'s—by 1990. And we repeated our offer of an "open laboratories" exchange of visits to facilities performing strategic defense research. Until recently, the Soviet response has been disappointing in a number of ways.

But in recent weeks, there have been fresh developments. The Soviets have made suggestions on a range of issues, from nuclear power plant safety to conventional force reductions in Europe. Perhaps most important, the Soviet negotiators at Geneva have placed on the table new proposals to reduce nuclear weapons. We cannot accept these particular proposals without change, but it appears that the Soviets have begun to make a serious effort.

If both sides genuinely want progress, then this could represent a turning point in the effort to make ours a safer and more peaceful world. We believe that possibly an atmosphere does indeed exist that will allow for serious discussion.

I have indicated to General Secretary Gorbachev my willingness for our representatives to meet to prepare for the next summit. The location is unimportant. What matters is that such a meeting take place in mutual earnestness so that we can make progress at the next summit.

Certainly Mr. Gorbachev knows the depth of my commitment to peace. Indeed, when we went to Geneva my advisors told me that if we could achieve nothing but an agreement to meet again—if we could do no more than that—then all our work would have been worthwhile.

On the first day of meetings, Mr. Gorbachev and I took a little walk together. He happened to mention that there was a great deal in the Soviet Union he wanted me to see; I answered that I wished he could visit the United States. Next thing you knew, we had agreed to meet here in 1986 and in the Soviet Union in 1987. Now, that wasn't so hard, was it?

In this essay on peace, then, we can assert that the time has come to move forward. Let us leave behind efforts to seek only limits to the increase of nuclear arms and seek instead actual arms reductions—the deep and verifiable reductions that Mr. Gorbachev and I have agreed to negotiate. The goal here is not complicated. I am suggesting that we agree not on how many new, bigger, and more accurate missiles can be built but on how to reduce and ultimately eliminate all nuclear missiles.

Let us leave behind, too, the defense policy of Mutual Assured Destruction—or MAD, as it's called—and seek to put in its place a defense that truly defends. Even now we are performing research as part of our Strategic Defense Initiative that might one day enable us to put in space a shield that missiles could not penetrate—a shield that could protect us from nuclear missiles just as a roof protects a family from rain.

And let us leave behind suspicion between our peoples and replace it with understanding. As a result of the cultural exchange agreement Mr. Gorbachev and I signed in Geneva, the Soviet Union has already sent to our Nation the Kirov Ballet and an exhibition of impressionist paintings. We in turn will send to the Soviet Union scholars and musicians—indeed, the Russian-born American pianist, Vladimir Horowitz, has already performed in Moscow. And we hope to see a large increase in the number of everyday citizens traveling between both countries—just last week at the White House I met high school students your age who will visit the Soviet Union this summer. Surely it is in our interest that the peoples in the Soviet Union should know the truth about the United States. And surely it can only enrich our lives to learn more about them.

This brings us at last to our conclusion—if I may, then, a few final thoughts. From the heart. I have tried to speak to you today of freedom and peace because as your President it is my duty to do so, and because in my lifetime I have seen our Nation at war four times. During the Second World War, hundreds of thousands of Americans died—including friends and relatives of mine, including friends and relatives of your families. Perhaps some of you have pictures in your homes of great-uncles you never knew, soldiers who fell fighting. The Soviets suffered even more painfully than we. As many as 20 million people in the Soviet Union died, and the western third of the country was laid waste—parallel, if you will, to the destruction of all the United States east of Chicago.

All the world has cherished the years of relative peace that have followed. In the United States, we have seen the greatest economic expansion and technological breakthroughs known to man—the landing on the Moon, the development of the microchip. But our greatest treasure has been that you, our children, have been able to grow up in prosperity and freedom.

It falls to us now—as it soon shall fall to you—to preserve and strengthen the peace. Surely no man can have a greater goal than that of protecting the next generation against the destruction and pain of warfare that his own generation has known.

There can therefore be no more important task before us than that of reducing nuclear weapons. I am committed—utterly committed—to pursuing every opportunity to discuss and explore ways to achieve real and verifiable arms reductions. What our two nations do now in arms control will determine the kind of future that you—and, yes, your children and your children's children—will face. So I have come here today to say

that the Glassboro Summit was not enough, that indeed the Geneva Summit was not enough—that talk alone, in short, is not enough. I have come here to invite Mr. Gorbachev to join me in taking action—action in the name of peace.

My friends, let us dare to dream that when you return for your own son or daughter's graduation, you will do so in a world at peace, a world that celebrates human liberty, and a world free from the terror of nuclear destruction. And let us work—first my generation, then soon, very soon, your own—to make that dream come true.

But again, mere words convey so little. There are moments, indeed, when those of my generation fear that your youth and health and good fortune will prove too much for us—too much for us who must tell you that good fortune is not all that life can present; that this good fortune has come to you because others have suffered and sacrificed; that to preserve it, there will come times when you, too, must sacrifice. Then our fears are dispelled. It happens when we turn from our own thoughts to look at you. We see such strength and hope. Such buoyancy, such goodwill, such straightforward and uncomplicated happiness. If we listen, before long we hear joyful laughter.

We know that God has already blessed you and that America has already imprinted the love of peace and freedom on your hearts. We look at you, and no matter how full our own lives have been, we say with Thomas Jefferson, "I like the dreams of the future better than the history of the past."

THE SECRETARY OF STATE,
Washington, June 18, 1986.

Hon. ROBERT DOLE,
U.S. Senate.

DEAR SENATOR DOLE: We are writing to express our deep concern regarding Congressional efforts to require the maintenance of our nuclear deterrent force on the basis of standards in the outdated and violated SALT II Treaty, rather than looking toward our current and anticipated security requirements. We are particularly concerned by Congressional resolutions which would have the effect of undercutting the President's May 27 decision on U.S. interim restraint policy and would signal the Soviets that they need not take seriously their arms control obligations and commitments of our forward-looking policy of restraint.

With his May 27 decision, the President sought to substitute a relevant and operational foundation of restraint for one which was not working. This policy would be undercut by resolutions which ignore the obvious shortcomings of the SALT regime and require U.S. compliance with a Treaty, or selected parts of it, that was never ratified, has already expired, and which the Soviets continue to violate. Such an act by the Congress would be unprecedented. It would confirm to the Soviet Union that they could pick apart arms control agreements and discard limitations they find inconvenient.

The past has not provided real solutions to the pressing need for meaningful arms control agreements. No policy of interim restraint can become an adequate substitute for an agreement on significant reductions in offensive nuclear arms—one which provides for reductions in crucial indicators of strategic strength and enhances stability. Such reductions remain our top arms control priority. The SALT II Treaty did not mandate such reductions. It allows substantial increases in nuclear forces.

The U.S. and the Soviet Union have every incentive to fulfill the promise the Geneva negotiations offer for radically reducing offensive nuclear weapons and the risk of nuclear confrontation. As these negotiations continue, we must be united in encouraging the Soviets to give substance to the pledge General Secretary Gorbachev made with the President to seek early progress, particularly in areas of common ground, including the principle of 50 percent reductions in nuclear arms. We note that the Soviets have made some proposals subsequent to the President's decision and we are carefully examining them to determine whether they might contribute to the common ground.

We ask that you support the President in his recent decision. A demonstration of support for the President's May 27 decision will strengthen our position to obtain radical reductions in offensive nuclear arms and ensure U.S. and Allied security, as well as demonstrate that Soviet cheating is simply unacceptable.

Sincerely yours,

GEORGE P. SHULTZ.
CASPAR W. WEINBERGER,
Secretary of Defense.

ADDRESS BY SENATOR LUGAR ON CENTRAL AMERICA

Mrs. KASSEBAUM. Mr. President, I would like to include in the RECORD the thoughtful perceptive remarks on Democracy and Central America given by Senator LUGAR at the National Press Club on June 17.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

DEMOCRACY AND CENTRAL AMERICA

(A Speech By Senator Richard G. Lugar, Chairman, Senate Foreign Relations Committee)

Seventeen months ago, I addressed this club as the new Chairman of the Senate Foreign Relations Committee. Many political and foreign policy commentators suggested then, that foreign policy debate was unfortunately fractious in Congress and with the Administration, because the Foreign Relations Committee had lost much of its sense of direction and confidence, and thus its prestige and power.

The Committee began the 99th Congress with a series of well attended and well reported hearings reviewing the overall direction of American foreign policy. A spirit of boldness combined with Senatorial comity developed in those hearings. The Committee has proceeded to establish a strong record of bipartisan leadership on a large majority of tough foreign policy issues.

We passed the first foreign aid bill in four years with 75 votes on the Senate floor. We reasserted the Committee's policy making powers by shaping and approving a number of funding authorization bills. We are monitoring closely the work of United States arms control efforts in Geneva in preparation for managing the ratification of a treaty on the Senate floor. We believe that we have worked successfully with President Reagan to bring constructive change to American foreign policy in South Africa and in the Philippines.

We have not achieved, however, the bipartisan success that we must have if we are to be successful in our foreign policy toward Nicaragua. We need to do better.

I believe there is a way to build the necessary consensus in Congress and with the President to bring democracy to Nicaragua. This would further the democratic gains already achieved in El Salvador, Guatemala, Honduras, and Costa Rica, and enhance prosperity in all of Central America.

The Nicaraguan debate currently languishes in Congress. It will be back and forth between both houses and the White House until we are able to agree, as Americans, on what objectives are attainable, and on the means we have and are willing to use to obtain those objectives.

On March 27, I was the manager of legislation on the Senate floor that authorized $100 million of military and humanitarian aid over eighteen months to the forces fighting the Sandinista regime of Nicaragua. The $70 million of military assistance would not be available until attempts to bring the Contras and the Sandinistas to the negotiating table had failed, or having taken on such negotiations, all reasonable prospects of success had ended. The Senate bill provided a time limit of roughly 100 days for the negotiating track to succeed.

The House of Representatives did not take definitive action, but during the March debate, a majority of members seemed pointed toward humanitarian assistance only.

The Senate legislation passed by a vote of 53-47 with 11 Republicans voting "no" and 11 Democrats voting "yes." A degree of bipartisanship was apparent, but I had hoped for a much broader consensus. I believe that many Democratic Senators shared that aspiration. Lengthy negotiations with Senate Democratic Leader Robert Byrd of West Virginia and Senator James Sasser of Tennessee encouraged Majority Leader Robert Dole and me to believe that over two-thirds of the Senate might be prepared to adopt a strong consensus policy. I hope that this will be the case in subsequent votes.

A growing problem for such consensus building is that Senators have been casting votes on the Nicaraguan issue for several years, in addition to earlier votes on El Salvador policies. Many Senators have been voting "no" for so long that it is difficult for them to rationalize, and to explain to constituents, that they are now in favor of policies which involve risks and expenses in Central America.

Furthermore, the safest political course for any legislator has been to note that a majority of the American people are not aware of the contending parties in Central America, and want only to make certain that American miliary forces are not committed there. Every poll shows, by substantial majorities, American voters oppose military and even economic assistance to friendly forces in Latin America.

At the same time, however, American citizens and most of their legislators are united on the proposition that neither Nicaragua nor any other Central American country should become a military base for the Soviet Union, a second Cuba in our hemisphere.

It is ironic that a few Senators who regard Contra aid as provocative and militaristic have no trouble saying they would advocate something far more drastic such as the use of American troops under certain cases. Yet, those who argue that the Contras have acted as a "spur" for the Nicaraguan government to invite the intervention of the Soviets and their bloc allies into the country simply do not know their chronologies. Events in Nicaragua have unfolded according to a logic of their own. American policy tried to stake out its goals under the Carter administration, but could not compel the

Sandinistas to forget their ideological commitments just because we were willing to forget ours.

In earlier years, the Administration argued for Contra aid to interdict supplies coming out of Nicaragua to insurgent guerilla forces battling the democratic government of El Salvador and Guatemala. This year, the Administration's objective does appear to be clearly, a change of government in Nicaragua. Assistance to the Contras, the Administration argues, will force the Marxist Sandinistas to negotiate the terms of a new constitution, and then agree to free and fair elections for a government which has the democratic consent of the governed.

Our country has been confused about our objectives and our prospects for success. Sharp divisions in the Congress reflect that public mood.

For too long, the United States took the path of least resistance in its Central American policies. This meant regarding as normal and acceptable, without comment or criticism, governments which had come to power by irregular means, ruled without reference to law or human rights, and which denied large segments of the community an opportunity to participate in both public life and the rewards of economic activity. The United States followed this unfortunate policy under the guise of anti-Communism.

This was certainly the case for many years in Nicaragua. But one has to ask whether the way to make up for this record is to begin to practice non-intervention now, so that the Sandinistas, like Somoza, can benefit from a new era of American complicity. If we owe a debt to the Nicaraguan people, we should pay it in the currency of our own discomfort, not theirs.

The Nicaraguans have a long historical memory. So do their neighbors. It is the role of the United States in the past, rather than the present, which dominates the minds of Sandinistas, and to a very great degree, other Latin American countries. The Sandinistas broadcast rumors of imminent invasion daily. Other Central and South American nations that have no affinity for the Marxists in Nicaragua are nonetheless extremely sensitive to the possibility, however remote, of American military intervention. The presidents of the new South American democracies in Argentina, Uruguay, and Brazil have expressed to me their opposition to American military intervention and the severe political reactions within their countries that such American action would incite.

In due course, the United States opposed the Somoza regime, but many American liberals and church people who have taken a strong interest in Nicaragua believe that the Contras are composed of Somoza remnants who are eager to establish another repressive right wing regime.

Furthermore, the liberals believe that the poorest people in Nicaragua are now receiving some long delayed attention. This notwithstanding, an estimated 500,000 Nicaraguans, not oligarchs but primarily Moskito Indians, farmers and shopkeepers, have fled from the country. The less than 3 million who remain are growing poorer still.

Liberal humanitarians argue that continued United States pressure through aid to the Contras ensures a continuing decline in standard of living and continued abnormal allocation of scarce economic resources to a large Nicaraguan military establishment. Yet, the Nicaraguan army is apparently larger than those of all its neighbors combined; and let the record show, it was organized and grew during the period in which the United States aided the Sandinistas. It continues to buy or borrow offensive and defensive Soviet bloc and Cuban arms.

Leaving aside, for the moment, any deficiencies in the specifics of the policy argued by President Reagan and a majority of Senators, the only other rival congressional policy is one which provides for a defensive quarantine of Nicaragua. The assumptions of this containment policy are that surrounding countries would be assisted in defending their borders, and that Nicaragua should assume a massive direct strike of American forces if the Sandinistas tried to base Soviet troops or offensive aircraft and submarines.

In the meanwhile, the Sandinistas would be left to stew in their misery with human rights suspended for ordinary people. This policy assumes disastrous internal experiences and pressure from Central American neighbors would lead toward Nicaraguan democratization and a rejoining of the family of democracies.

Some variations of this quarantine policy assume continued U.S. food and clothing appropriations for an estimated 15,000 Nicaraguan freedom fighters who now reside outside Nicaragua. Other variations simply leave the Contras to do the best they can without any further American government ties.

This rival policy argument presumes that the Cubans and the Soviets would leave things alone. However, the reasons for any automatic Soviet laissez faire are not apparent. Even in the midst of difficult domestic times, the Soviets continue to subsidize Cuba at an annual cost of approximately $3 to $4 billion. For projects which cause anxiety for us, less than two hours flight time from our borders, Soviet support has been enthusiastic and generous to a fault.

Many supporters of the quarantine policy are not deeply wedded to the concept. After I returned from the Philippines with the American election observer group, and even more after Mrs. Aquino assumed power in the Philippines, the cry went up, "Let's have a Philippine success in Nicaragua."

At the time, I tried to point out potentially similar pathways. The Administration indicated that my "free and fair election ideas," derived from recent adventures in Manila, were interesting, but not especially welcome as a distracting avenue of action. Secretary George Shultz offered calm but firm advice that the President had a bill on which he wanted an up or down vote in the Senate.

So with the strong help of Secretary Shultz, Admiral John Poindexter, Majority Leader Bob Dole, and the President's personal phone calls, we ground out a 53–47 vote in the Senate to save the President's legislation a few days after it had been defeated 222–210 in the House, and was absolutely dead in the water. Unfortunately, the House leadership saw no need to act further for a while. With March 31 past, no more money of any kind is available to the Contras. That remains the case today.

I am still convinced that our objective in Nicaragua should be to build the circumstances which will make it possible, some day, to observe a democratic election preceded by the restoration of civil liberties; true freedom of the press to cover the candidates, issues, and procedures of the election; and freedom for candidates to roam the whole country without harassment and intimidation. Prior to that time, a constituent assembly or constitutional convention should be elected in similar open circumstances to draft a democratic constitution similar to those of Costa Rica, Guatemala, El Salvador, or Honduras.

This is the kind of policy goal the American people can understand and support. It was clear after the events in the Philippines that the American people were genuinely excited about how the United States had helped encourage the resurgence of democracy in a troubled nation. After the strong public disagreements over the Vietnam War and the frustrations over Iran, the American people saw in our strong support for democracy in the Philippines a foreign policy that made them proud.

We must have equal pride in the idealism of our Nicaraguan policy. We want the Soviets, the Cubans, the East Germans, the Bulgarians, and their ilk to get out of Nicaragua and to stay out for our own valid national security reasons.

We also want a new government in Nicaragua that cherishes freedom, and that builds democratic institutions. We want to assist only those Nicaraguans who share our idealism, and our pride in a foreign policy that can be sustained through many years.

A democratic Nicaragua will not be a threat to its neighbors or a security threat in our hemisphere. A democratic Nicaragua would finally make it possible for economic progress to resume in all of Central America. Without threats of continued civil wars, the United States could initiate the second major facet of a Central American policy: the generous economic assistance to friends who are close neighbors and whose remarkable democratic achievements in the past five years alone merit our enthusiastic political and economic support.

Parenthetically, let me comment that we must adopt that second stage of economic assistance policy toward the Philippines in a timely and generous manner now. That democracy is a triumph for the Filipino people and for us. Both countries have won a major foreign policy victory. We must consolidate that gain.

All of the things which a democratic Nicaragua will accomplish need to be balanced against what will happen without it. To quote President Oscar Arias of Costa Rica, "There will never be peace in Central America as long as there is a Marxist regime in Nicaragua with the characteristics of the nine commandantes." This means that if there is no democratic Nicaragua, every other Central American democracy will feel the need to be more heavily armed and militarized than would otherwise be the case. A quarantine or the containment of a Marxist Nicaragua, therefore, is a far less simple solution for the other Central American democracies than the many advocates of that policy claim.

The steps we must take to set up the final stage of free and fair elections for a democratic Nicaragua are a balanced combination of diplomatic and military elements.

Even while we have been debating Central American issues in the Congress, extraordinarily talented and courageous presidents have been elected in four neighboring countries. Vinicio Cerezo, the new President of Guatemala, is determined to push for a Central American parliament. Oscar Arias, the new President of Costa Rica, is determined to press for democratic elections of all members of that Parliament, including those to be elected in Nicaragua. President Duarte in El Salvador and President Azcona in Hondu-

ras are equally eager to press for a democratization timetable in Nicaragua, in addition to sound verification procedures to monitor the reduction of Nicaraguan military forces and withdrawal of all foreign military elements.

These four Presidents have kept the United States informed of their plans and aspirations. We have been well represented in that planning by Assistant Secretary of State Elliott Abrams and special Ambassador Phil Habib, who had barely finished his own diplomatic observation in the Philippines when he was called by President Reagan to proceed to Central America.

On the day that President Arias was inaugurated in Costa Rica, I sat with Presidents Cerezo, Azcona, Duarte and Febres Cordero of Ecuador, Vice President Bush and Phil Habib around a breakfast table in San Jose. The conversation on our mutual objectives was direct and constructive. Later, I visited with President Arias and his wife at their residence. I believe that I have a good understanding of what each wants to achieve.

If Nicaragua poses a security problem for the United States, the Sandinistas pose a more immediate and dangerous threat to Central American democracies. The democracies need peace to undertake desperately needed economic growth measures. They need security from insurgent guerrilla attacks.

The romance of revolutionaries attacking right-wing authoritarian governments is over. It is perverse nonsense when the governments are headed by distinguished democrats such as Duarte, Cerezo, Arias, and Azcona. They and not the Marxists are the ones legitimately fighting for religious and civil liberties, land reform, judicial reform, and economies which will merit new investment capital. The four have told President Daniel Ortega of Nicaragua, face to face, that a Marxist totalitarian government at the throat of Central America will not do. The Central American Presidents have delivered that message in forceful and extended conversations.

There is no point in underestimating the task before us and our Central American allies. Marxist governments typically do not permit themselves to be voted out of office in free elections. They abolish civil rights, curtail a free press, harass religious expression, build ridiculously outsized armed forces, and deliberately subvert their neighbors. The Sandinistas themselves have coined the phrase "revolution without frontiers."

Unfortunately, every successive internal change in Nicaragua since 1979 has narrowed the space for political pluralism and dialogue. This was emphatically the case even during the 18 months in which the Carter administration bent over backwards to be helpful and comprehending. Today, of course, all measures are attributed to a supposedly imminent U.S. invasion, or to our assistance to the armed opposition.

Before Phil Habib took his first trip to Central America in the early Spring of this year, he told me and others that he could not negotiate a successful formula for the future of Central America unless the Congress voted military assistance to the Contras. He still believes that, and so do I.

The Marxists in Nicaragua know that the Contras are a military threat. Given the fragile economic underpinnings of their regime, the Marxists face internal destabilization long before military defeat. They show no signs of embracing democracy and free and fair elections for the good of the people and the prosperity of their country. They must be compelled to face negotiations with the Contras and with neighboring states who insist upon democracy.

Let me underline the obvious, again. Military assistance to the Contras is the essential factor for any reasonable hope of successful negotiations.

The American people have been skeptical about the Contras. In addition to alleged ties with Somoza's national guard, public charges have been made that some Contra elements have engaged in drug dealing and other criminal activity. Secretary Abrams has been active in spurring Contra leadership reform. Senators Nancy Kassebaum, Warren Rudman, Sam Nunn, and Bill Cohen were successful during Senate debate in demanding greater accountability by the Contras, and the unification of their efforts toward assurances of legal and democratic procedures.

If the Contras are not as strongly for democracy, for civil rights, and for legal procedure as we are, they will become irrelevant. The American people and the Central American democracies will not back any Nicaraguan freedom fighters who have any other agenda than a passion for democracy. The Contras need to know that. I am spelling it out clearly, again, today. I want to see much more evidence that the Contras can articulate loudly and clearly the constitution that they want to cherish and for which they are willing to risk their lives with our assistance.

Even while Congress has debated these issues and while aid to the Contras has been cut off for the last eleven weeks, substantial progress has occurred in reform of the Contras, and in discussion by the Contadora countries, the support group, and Central American countries about the fate of Nicaragua.

The United States government has taken the Senate legislation seriously. Phil Habib has been active and successful in bringing about new support for the United States positions.

Habib's success has, in fact, set off alarm bells among some members of Congress and the Administration sufficient to surface a Department of Defense publication entitled "Prospects for Containment of Nicaragua's Communist Government." The paper argues that a Contadora Treaty might be signed soon that would be deficient in enforcement mechanisms against insurgency and military buildup, and which would leave Marxist Nicaragua unchanged internally despite all of the discussion of democratization.

The Defense Department report cites other treaties violated routinely by Marxist governments that should not have been trusted because they never intended to abide by any inconvenient treaty provisions. It estimates that in three years, with no Contras still available, the United States would be asked by Honduras and Costa Rica for assistance in containing the Nicaraguan menace. The upgrading of the military forces of friendly Central American countries would cost $1.5 billion. The estimated annual cost of U.S. containment forces would be $7.2 to $9.1 billion to quarantine Nicaragua.

Thus some Defense Department analysts began to argue that the Contadora process was getting out of hand and that Latin American countries, simply weary of the whole process, might throw in all their cards, sign a document, and leave themselves and the U.S. open to an ongoing, expensive debacle.

Washington abounds with partisans who are convinced that diplomacy will not make it in Nicaragua. Many others are convinced that the Contras are unworthy of military support or incapable of effecting a successful military effort.

I contend that neither the Contadora process nor Phil Habib plus the Central American democratic presidents are likely to bring about free and fair elections in Nicaragua without military assistance to the Contras. And the Contras are unlikely to reach the bargaining table without very sophisticated alliances with the Central American countries and the most skillful of diplomatic efforts by Elliott Abrams and Phil Habib.

Only a combination of diplomats, presidents, and Contras has a high probability of getting the job done with a minimum of intervention by the United States in Latin American affairs, a very important requirement by Latins, and with a minimum of financial and military support commitments by the United States, a very important domestic political requirement.

I have Congressional friends who want the Senate Foreign Relations Committee to investigate alleged drug dealing by the Contras. Others want to investigate Phil Habib for his alleged willingness to terminate aid to the Contras if a satisfactory Contadora treaty is signed.

Without demeaning any of these friendly suggestions, they are reminiscent of earlier demands on my Committee. At that time, some wanted investigations of scandalous financial dealings by Ferdinand and Imelda Marcos. Others questioned whether U.S. Ambassador to the Philippines Stephen Bosworth, was so pro-opposition that President Marcos was being undercut even as Marcos claimed that he was trying to protect our bases against the Communist New Peoples Army.

My advice then and now is to keep all tracks clear for the main chance. The main chance is democracy through free and fair elections, freedom of speech, freedom of religion, freedom of the press, freedom to congregate and campaign, justice in the courts, and free enterprise. The United States must position itself for that chance just as we did in the Philippines.

I witnessed the November 3, 1985, presidential election in Guatemala. It was an election that could be replicated in Nicaragua with a few months of preparation. The heartbeat of Latin America is democracy, not Marxism. Every Latin yearns for the dignity of self expression. That means the right to vote secretly and to know that the vote is correctly counted as a part of national decision making for leadership and the proper democratic checks and balances on that leadership.

This belies the notion of many cynics of the right and the left that Central Americans are not "ready" for democracy, or that some sort of dictatorship, benevolent or well-intentioned, is preferable to the imperfections and difficulties of an open political system.

When Vice President Bush, Ambassador Lou Tambs, Elliott Abrams, Phil Habib, and I marched behind the American flag into the San Jose soccer stadium for the Costa Rican Presidential Inauguration, the stands erupted in a spontaneous demonstration for the United States of America. The applause continued for our 200 yard procession and was recorded by live television throughout Central America. By contrast, the Nicaraguan ambassador marching behind the flag

was booed. That too was noted and recorded.

Outgoing President Monge and incoming President Arias both told me in separate conversations that people all over Costa Rica had watched on cable television the experiences of our election observer delegation in the Philippines, and my reports to the American people.

They pointed out that Costa Ricans had come to a new appreciation of the willingness of the United States to support democracy, even against an authorization regime which claimed to be anti-Communist.

In that spirit, I count upon liberal friends in Congress who were enthusiastic about democracy in the Philippines to demonstrate a similar commitment for Nicaragua. We should demand of Managua nothing less than we did of Marcos.

Marcos with all his faults permitted lively opposition newspapers. Even in the highly flawed 1984 election, genuine opposition parties won 30 percent of the seats in the National Assembly, and the government faced a serious parliamentary opposition. The Catholic Church and its radio station, *Veritas*, were a major force rallying in democratic opinion. Marcos may have miscalculated monumentally, but he did call for a special election, and invited observers from the United States to validate his anticipated landslide victory.

No such circumstances are presently available in Nicaragua. The opposition is fighting for its life. In the 1984 Nicaraguan elections, the major presidential candidate of the opposition felt obliged to withdraw because of threats to his safety and that of his followers. The radio station of the Catholic Church has been silenced, and the principal daily, *La Prensa*, strongly censored. Ortega and Borge have suppressed civil liberties, and locked up and tortured more political prisoners than Marcos, whose country is 18 times as large. Unlike Marcos, however, Ortega and Borge are unlikely to respond to any challenge which the United States raises to their democratic bona fides.

Those liberals who insist that it is naive or simply inappropriate to ask a Marxist government to open up its systems are wrong. They are as wrong as those conservatives who argued only yesterday that a democratic system was a luxury which the government of El Salvador, fighting for its life against Communist guerrillas, simply could not afford.

The American people do not support the idea of Americans engaged in war in Central America. The American people do support democracy. They should reasonably anticipate that this will require our support of Nicaraguans who are willing to fight for freedom and a democracy which they must define explicitly. It will also require support of diplomacy with democratic governments in Central and South America who want to assist negotiations now, and are willing to stand with us as guarantors of the new democratic order as it is established by Latin Americans for Latin Americans.

The United States of America has enjoyed success in working with those who cherish political freedom to regain that freedom from authoritarian governments of the right. It is equally important that we assist those who are striving for freedom against dictatorships of the left. I believe that this universal fight for democratic institutions deserves bipartisan support. I am certain that Americans want a common sense sorting out of what we should do in Nicaragua. I hope that I have provided a good measure of that common sense today.

NATIONAL ICE CREAM MONTH

Mr. THURMOND. Mr. President, the Washington, DC, ice cream party, which is being held today and sponsored by the International Association of Ice Cream Manufacturers, is but the beginning of a month-long promotion of America's favorite dessert and snack food. Eating ice cream is a fun way to beat the summer heat.

The ice cream manufacturers' importance to Americans cannot be understated. The United States is the largest consumer of ice cream and related products in the world. Over 881 million gallons of ice cream were enjoyed by Americans last year. It is eaten by young and old, in the north, south, east, and west, and enjoyed by all. As an ice cream aficionado, I was pleased to be designated the honorary cochairman by the International Association of Ice Cream Manufacturer's Ice Cream for America Program.

Congress recognized Americans love for ice cream products and designated the month of July as National Ice Cream Month and the second Sunday in July as National Ice Cream Day.

Ice cream is a good, wholesome product that merits special recognition by Congress and the American people. Today, we again thank the 18,000 people employed in the production of this classic American dessert and snack food, and look forward to many more dips and scoops in the years to come.

TRIBUTE TO JOHN F. WATKINS

Mr. HEFLIN. Mr. President, the history of the State of Alabama has been filled with the labor, guidance, and care of many outstanding men. Through times of uncertainty and hardship these men have risen to every challenge. Their efforts have helped to support and strengthen all citizens.

John F. Watkins, who retired last month as the executive director of the Alabama League of Municipalities, has been one of Alabama's greatest, most dedicated servants. John joined the league in 1956 as a staff attorney, and, then, was elected executive director in July 1965. For 21 years he has tirelessly worked to lead Alabama through times of turbulence and transition. His presence and involvement have had a tremendous impact on the current outlook, and hope for prosperity of the people in my State. He has helped to bring Alabama within reach of great future goals and accomplishments.

Additionally, the invaluable friendship which John has long provided has been a source of steady support for myself as well as countless others. I have heard it said that a man is rich, indeed, if he has one friend in whom he can trust and confide. Well, if that is true, John Watkins is wealthy beyond imagination, for he has many such friends.

On May 19, I was honored to be one of several speakers at John's retirement dinner. During the ceremony, I was greatly moved by the eloquence and accuracy with which each speaker described the example which John has set. I believe that this great example should be shared with everyone and ask unanimous consent that the attached speeches, which were given at this retirement dinner, as well as a letter from Governor Wallace, be printed in the CONGRESSIONAL RECORD.

Mr. President, I commend the efforts and achievements of my good friend, John Watkins. His has done a great service to his State and his Nation. I know that many will remain mindful of his tremendous contributions and achievements.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT AT RETIREMENT DINNER BY MAYOR GUTHRIE SMITH OF FAYETTE, AL, SENIOR PAST PRESIDENT OF AL LEAGUE OF MUNICIPALITIES

It is my distinct honor and pleasure, tonight, to pay special tribute to a distinguished gentleman who has a proven record of dedicated efforts and success in upgrading the quality of municipal government in Alabama.

In preparation of my remarks, I found that words seem inadequate for me to properly express our appreciation in the manner this man so richly deserves. Be that as it may, I shall give it my very best effort.

Exactly twenty one years ago, in May 1965, the Alabama League of Municipalities assembled in Mobile for our annual convention. A decision of major importance was made on that occasion.

Alabama municipal officials unanimously promoted our League Staff Attorney, John Watkins, to the leadership position of Executive Director.

At that same meeting, held in the Admiral Semmes Hotel, a minor event took place when the convention very graciously elected me President of the League.

John, here we are in Mobile again, 21 years later.

A lot of water has swiftly flowed under the bridge during this period, bringing forth more gray hair to both of us.

Regrettably for the Alabama League, you are now hanging up your hat as Executive Director while I am still striving to become a better mayor and pay my civic rent.

It seems only yesterday that John Watkins first assumed the giant leadership and policy making task of Executive Director of the Alabama League of Municipalities.

John, we expected much from you as our Executive Director, and tonight I proudly report that you have far exceeded the demands we placed on you as our leader. You have always been far out front leading and challenging all of us to work harder and use our collective influence to better serve those whom we represent.

Your administration has kept pace with the many changes taking place in Alabama and our nation. Technological and sociological changes have been reflected in the increased complexity of municipal government.

Accordingly, the method of operation of the Alabama League changed under your direction.

John, you led the way in streamlining our standing committee assignment to better serve our needs in organization and setting specific goals each year. I know it has been your desire to get all municipal officials involved in a joint, unified effort to further the cause of municipal government. Through your expert leadership and wide use of committee assignments you now have more municipal officials involved in the big picture of local government than at any other time in the history of our League. I salute you for this major achievement.

Many sections of the Code of Alabama, and very significant amendments to our Alabama Constitution, reflect the wisdom and tenacity of John F. Watkins in helping provide our municipal operation with a legal environment that is second to none anywhere in the country. John, we would never even attempt to put a price tag on your tremendous value to our cities and towns throughout your years of service with the League. But if we ever did, the state-shared revenues that we receive as the direct result of your vast knowledge and your dogged efforts in the legislature would quite literally amount to millions and millions of dollars annually.

Early in John's term he realized how inadequate our rented headquarters building on Hull Street in Montgomery was. He marshaled the forces of Alabama municipal officials, convinced us to buy the land and erect our present League headquarters building one block from the state capitol. In October 1970 we moved into that building, completely debt free, because each municipality paid its proportionate share of the cost. Not only was this a financial bargain but it enhanced the Alabama municipal image by placing our fine headquarters building near the center of our state governmental complex.

This is just another example of John's fine, timely leadership.

In short, the underlying theme to John's 21 years leadership has been the promotion and protection of the interests of municipal government in Alabama. We are eternally grateful to you for your always urging us to continually watch for the pitfalls that sometimes face us at the state and national levels.

Your charming and beautiful wife, Ruth, is loved and admired by all of us, who are your municipal family. Ruth, you have spent many lonesome hours home while John was away so much attending meetings and working for all of us in Alabama municipal government. Your sacrifice and support during those time consuming years smoothed the rough road John sometimes had to travel. We thank you for your devotion and support which loaned John to us as our leader in our search for solutions to major municipal problems so important to us and all citizens whom we represent. We thank you, Ruth, and we love you.

In my estimation, John is really too young to retire, but this is his decision and we must abide by it. When I reach his age I'm sure I, also, will seriously consider retiring.

He has always been acutely aware of his age. For instance, Ruth told me about an occasion once in his early youth when his family was seated around the dinner table. The visiting preacher pushed his chair back with obvious satisfaction. He turned to John at the table and inquired, "how old are you, John?"

"That is difficult to say," was John's answer. "According to my latest school tests I have a psyschologicl age of eleven and a moral age of ten. Anatomically I am seven and mentally I am nine. But I suppose you are referring to my chronological age. I am eight but nobody pays much attention to that these days."

John has always exercised brevity in answering all questions as illustrated by his reply to the visiting preacher.

How times have changed since you were eight, John. When John Watkins speaks now everyone pays attention and listens. From years of study, research and on the job experience, words of wisdom and sound municipal advice flow freely from his great mind and intellect. His valued judgement is not only highly respected by us in Alabama but his expertise in the field of municipal government is well known and valued at the national level. His many committee assignments and service on the Board of Directors of the National League of Cities are proof positive.

During the past 29 years it has been my distinct honor and pleasure to work closely with our Man of the Hour—John Watkins.

I have become a better municipal official, because of his influence. Also, I have seen, first hand, the tremendous impact, for good, John's leadership has had in furthering the cause for better municipal government in Alabama.

All Alabama citizens, whom we represent, are better served and owe John Watkins a debt of gratitude for a job well done.

Quite frankly, I have always found John to be knowledgeable, dependable, conscientious, efficient, of great character and integrity and always an inspired leader. He is fiercely dedicated to the high role of municipal government and is never afraid to express himself in an articulate manner.

What more can one say about another human being?

We will miss you, John and Ruth, but we will always carry with us such fond memories, which time can never erase.

Whatever direction life takes you, we wish you both continued good health, happiness and success.

STATEMENT BY MAYOR HAROLD SWEARINGER OF PINE HILL, AL, PRESIDENT OF AL LEAGUE OF MUNICIPALITIES

John, how does one put into words all the things you mean to the Alabama League of Municipalities, its member cities and towns and its officials. I have thought long and hard on what to say on this mementous and historic occasion and adequate words still have not come to me. However, since it is my honor and privilege to have the closing remarks of tribute from the League on this signal occasion I will endeavor to express what is surely in the hearts of all of us here tonight.

It is a mark of this man that he told us last July he would be retiring this May. He saw to it that there was plenty of time for a smooth transition of duties and responsibilities within the organization. My year as president has brought to me, in the most vivid way possible, just what John Watkins means to the Alabama League of Municipalities. As I said in my report to the convention this morning, this man has been the heart and soul of the Alabama League of Municipalities these past 21 years he has served as our Executive Director. I had never fully realized, before this year what an enormous role he has played in making the Alabama League the premier municipal league in all this great land of ours.

In his remarks, Guthrie made brief reference to the number of changes brought about in Alabama law for the betterment of our municipalities under the leadership of this man. We could not begin to list them all but I calculate that under his leadership there have been at least 135 or more actions taken by the Alabama Legislature that affect our cities and towns. These laws range over the entire spectrum of municipal government, including but not limited to, elections, courts, police powers, licenses and taxes, state shared revenue, incorporations, annexations, forms of government, duties and qualifications of municipal officials, finance and borrowing powers, municipal boards and many, many other areas affecting our cities and towns. I would like to make note of just a few of the more significant laws passed during this time.

We can look back to 1967 and the Constitutional Amendment to raise the debt limit to 20% of the market value of property, and then acts, too involved to detail, to liberalize our annexation procedures. Others were those allowing cities to levy a sales tax paralleling the state sales tax and also allowing the state to collect the tax for us, a law providing for non-partisan municipal elections that has had a very positive effect on the municipal election process, an act to limit the amount of recovery in tort claims against municipalities, the constitutional amendment to set up eight classes of municipalities by population, the authorization in 1977 of an interim committee on municipal government and its extension by subsequent acts including the just adjourned session, laws affecting state revenues shared with municipalities, and last but by no means least, the recent act giving municipalities a share of the Oil & Gas Trust Fund revenues. Each of you would probably come up with a different list but I think that these serve to demonstrate the tremendous gains made by our municipalities through legislation at the state level. And though he would quickly deny it, it has largely been accomplished through the efforts of John Watkins and the perception of the Alabama League of Municipalities that he has cultivated with our lawmakers and with those who have occupied the governors chair.

In another vein, John was most instrumental in working with NLC to get Federal Revenue Sharing enacted. This has been a boon to every municipality, not only in Alabama but all across our nation. Frankly, I think that the Congress should vote to extend Federal Revenue Sharing this year as a tribute to John Watkins.

John, your contribution to citizens of the cities and towns of this great state has been enormous. We deeply appreciate what you have accomplished on our behalf and wish for you and Ruth, Godspeed on the road ahead.

STATE OF ALABAMA,
GOVERNOR'S OFFICE,
Montgomery, AL, March 25, 1986.

Mr. JOHN F. WATKINS,
Executive Director, Alabama League of Municipalities, Box 1270, Montgomery, AL.

DEAR JOHN: Over the last many years, you and I have witnessed a great number of people appear on and depart the public scene in our state capitol. All of them, of course, made some contribution but some more than others. I consider you at the top of the latter category.

You will recall that our relationship began back in the 1940s when you worked with Ed Reed. Ed was a capable man with

brilliant judgment, as prime example of which was his having you to assist him. John, during these intervening years I have observed your devoted and tireless efforts on behalf of the cities of Alabama. I have seen how you unselfishly gave of your personal time, away from your family, in order to benefit others. You have made many friends over those years, more than you perhaps know, and I am proud to be one of them. I suppose if I were asked to describe my relationship with you, my description would first include integrity but most of all I would say "He's my friend."

John, you have contributed much to this fine state and region through your years with the Alabama League of Municipalities and it has been my great personal privilege to have known and worked with you all this time. I thank you for your service and hope that you, Ruth, and your family will enjoy a long, healthy, and happy time in your retirement.

Your friend,

GEORGE C. WALLACE.

A TRIBUTE TO JOHN F. WATKINS, BY SENATOR HOWELL HEFLIN

CONVENTION OF THE ALABAMA LEAGUE OF MUNICIPALITIES, MAY 19, 1986

Church reformer Martin Luther in his work, "Table Talk;" said: "A faithful and good servant is a real Godsend, but truly tis a rare bird in the land."

John Watkins, you are truly a rare bird in the municipal land.

John Watkins, you have been a faithful and good servant to all our cities and towns.

Gathered here tonight are many fellow servants to pay tribute to a man to whom we are all in great debt. We use the word "servant," not to indicate any subservience, but as a status of equality, for we are all fellow servants in the vineyards of government. We are indebted to you, John Wakins, for so many things that it would be impossible for us to enumerate them all.

For 21 years, from 1965 to 1986, you have been one of Alabama's greatest servants as executive director of the Alabama league of Municipalities. These years signify 21 years of strife, change, progress, growth, and advancement. Through them all, your sound and reasonable counsel has saved Alabama from much hardship and violence. Changes in industry, agriculture, and society have shifted the concerns and issues important to us all. However, your leadership has provided cities and towns with essential guidance during a time which has been marked by such great transition. Because of your tireless, devoted service throughout this period of uncertainty and change, Alabama's municipalities have emerged stronger, more unified, and uniquely prepared to face the challenges and demands of the future.

Alabama is a better place to live because of you.

For all this, we are in your debt.

The Alabama League of Muncipalities is a vibrant and strengthened organization that facilitates interaction between all municipal officials in solving problems and achieving common goals, and educates municipal officers as to their duties and functions. The league is outstanding and effective because of your service.

You have served the league well. For this we are all in your debt.

The people of our communities, our State, and our Nation have benefited because of the many contributions you have made to all units of government. While your major leadership has been in the field of municipal government, your ideas, suggestions, contributions, and acts of leadership have made our State and Nation more responsive to the needs of our people, who are the sole proprietors of government in a democracy.

For this we stand in your debt.

While we owe you much for the accomplishments of your office, we are even more indebted because of your great friendship. The time, advice, and support that you have given us when helping with our individual or political problems, as well as your understanding of our weaknesses and strengths, makes all of us feel close to you. You have made all of us better servants of the people.

For this, we, your fellow servants, will always be in your debt.

I am personally indebted to you for a long-standing friendship that dates back to school days. Though most here tonight have not had the privilege of a similar length of friendship; nevertheless, I am sure the intensity and the endearment of their feelings is best expressed by joining me in affectionately calling you a "dear old friend."

While the leaders of municipal government have gathered here to pay tribute and wish you well, I somehow believe that in the heavens above there are many departed fellow servants who are looking down and wishing you the best in your upcoming retirement years. I somehow hear in the distance the voices of Eddie Reid, Jess Lanier, Josh Sellers, Albert Boutwell, John Gaither, John T. Reed, Doug Moore, and Patricia McKenzie, as well as many others, who join with me, and with those present, tonight, in paraphrasing a portion of the 21st Verse of the 25th Chapter of Matthew—

* * * Well done, thy good and faithful servant.
Thou hast been faithful over many things * * *
Enter thou into the joy of our Lord.

Your beloved wife Ruth has been your and our fellow servant. Her service to the league, our cities and towns, and government, at every level, has been magnificent and most beneficial. But, we love you, Ruth, the most for the support that you have given our dear old friend John. You have stood by him in sickness, in health, comforting him and making him a great leader. You bear the name of the most devoted woman in the Old Testament. The words of Ruth to Naomi come to mind when we think of your love and devotion for John:

* * * Entreat me not to leave thee, or to return from following after thee: for whither thou goest, I will go; and where thou lodgest, I will lodge: thy people shall be my people, and thy God my God: Where thou diest, will I die, and there will I be buried: * * *

Ruth, we are indebted to you, for you, likewise, have been a faithful and good servant.

You have given me the license to paraphrase the Bible. Please allow me the right to paraphrase an old Irish prayer which seems to me to express for all present the affection and well-wishing that each of us holds for John and Ruth.

May the road rise to meet you.
May the wind always be at your back.
May the sun shine warm on your face.
And may the rains fall soft on your fields.
And during the remainder of your days,
May the good Lord hold you,
Dear old friend John and your beloved Ruth,
In the hollow of His hand.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mrs. Emery, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILL SIGNED

At 11:01 a.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 1106. An act to provide for the use and distribution of funds appropriated in satisfaction of judgments awarded to the Saginaw Chippewa Tribe of Michigan in dockets numbered 57, 59, and 13E of the Indian Claims Commission and docket numbered 13F of the U.S. Claims Court.

At 12:53 p.m., a message from the House of Representatives, delivered by Mr. Berry, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the joint resolution (H.J. Res. 652) to provide for the temporary extension of certain programs relating to housing and community development, and for other purposes; with an amendment, in which it requests the concurrence of the Senate:

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, June 19, 1986, she had presented to the President of the United States the following enrolled bill:

S. 1106. An act to provide for the use and distribution of funds appropriated in satisfaction of judgments awarded to the Saginaw Chippewa Tribe of Michigan in dockets numbered 57, 59, and 13E of the Indian Claims Commission and docket numbered 13F of the U.S. Claims Court.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on Labor and Human Resources, with an amendment in the nature of a substitute:

S. 2184. A bill to authorize appropriations to the National Science Foundation for the fiscal year 1987, and for other purposes (Rept. No. 99-325).

By Mr. LUGAR, from the Committee on Foreign Relations, without amendment:

S. 2572. An original bill to provide economic support for the November 15, 1985, agreement between the Government of Ireland and the Government of the United Kingdom, and for other purposes (Rept. No. 99–326).

By Mr. THURMOND, from the Committee on Judiciary, without amendment and with a preamble:

H.J. Res. 297: A joint resolution to designate the week beginning July 27, 1986, as "National Nuclear Medicine Week."

S.J. Res. 256. A bill designating the August 12, 1986, as "National Neighborhood Crime Watch Day."

S.J. Res. 274. A joint resolution to designate the weekend of August 1, 1986, through August 3, 1986, as "National Family Reunion Weekend."

S.J. Res. 362. A joint resolution to designate the week of December 14, 1986, through December 20, 1986, as "National Drunk Driving Awareness Week."

S.J. Res. 363. A joint resolution to designate July 2, 1986, as "National Literacy Day."

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary:

D. Lowell Jensen, of Virginia, to be U.S. district judge for the northern district of California;

Leon B. Kellner, of Florida, to be U.S. attorney for the southern district of Florida for the term of 4 years;

Jerome G. Arnold, of Minnesota, to be U.S. attorney for the district of Minnesota for the term of 4 years;

Andrew J. Maloney, of New York, to be U.S. attorney for the eastern district of New York for the term of 4 years;

Paul R. Nolan, of Washington, to be U.S. marshal for the eastern district of Washington for the term of 4 years; and

Donald W. Wyatt, of Rhode Island, to be U.S. marshal for the district of Rhode Island for the term of 4 years.

By Mr. THURMOND, from the Committee on the Judiciary:

Report to accompany the nomination of Daniel A. Manion (with additional and minority views) (Exec. Rept. No. 99–16).

By Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation:

The following officers of the U.S. Coast Guard for appointment to the grade of rear admiral: Alan D. Breed, John W. Kime, Robert L. Johnson.

(The above nominations were reported from the Committee on Commerce, Science, and Transportation with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. DENTON, from the Committee on Armed Services:

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be admiral

Vice Adm. Frank B. Kelso II, [redacted]/1120, U.S. Navy.

The following-named officer, under the provisions of title 10, United States Code, section 610, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be vice admiral

Vice Adm. Kendall E. Moranville, [redacted]/1310, U.S. Navy.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. CRANSTON (for himself, Mr. KENNEDY, Mr. WEICKER, Mr. BRADLEY, Mr. LEVIN, and Mr. SPECTER):

S. 2570. A bill entitled the Anti-Apartheid Action Act of 1986.

By Mr. BUMPERS (for himself, Mr. BIDEN, Mr. SARBANES, Mr. HECHT, Mr. KERRY, Mr. METZENBAUM, Mr. SIMON, and Mr. KENNEDY):

S. 2571. A bill to establish the National Nuclear Reactor Safety Study Commission; to the Committee on Governmental Affairs.

By Mr. LUGAR from the Committee on Foreign Relations:

S. 2572. An original bill to provide economic support for the November 15, 1985, agreement between the Government of Ireland and the Government of the United Kingdom, and for other purposes; placed on the calendar.

By MR. HEINZ (for himself, Mr. SPECTER, Mr. ABDNOR, Mr. PRESSLER, Mr. BYRD, Mr. ROCKEFELLER, Mr. FORD, Mr. HEFLIN, Mr. SIMON, Mr. PELL, Mr. STENNIS, Mr. LAUTENBERG, and Mr. MATTINGLY):

S. 2573. A bill to amend the Disaster Relief Act of 1974 to provide more effective assistance to disaster and emergency victims; to the Committee on Environment and Public Works.

By Mr. HEINZ (for himself, Mr. SPECTER, Mr. ABDNOR, Mr. PRESSLER, Mr. BYRD, Mr. ROCKEFELLER, Mr. FORD, Mr. SIMON, Mr. PELL, Mr. HEFLIN, and Mr. MATTINGLY):

S. 2574. A bill to amend the Disaster Relief Act of 1974 to provide more effective assistance to disaster and emergency victims; to the Committee on Environment and Public Works.

By Mr. LEAHY (for himself and Mr. MATHIAS):

S. 2575. A bill to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes; to the Committee on the Judiciary.

By Mr. DURENBERGER (for himself, Mr. BAUCUS, Mr. DOLE, Mr. CHAFEE, Mr. HEINZ, Mr. CHILES, Mr. ANDREWS, Mr. ABDNOR, Mr. MITCHELL and Mr. BENTSEN):

S. 2576. A bill to amend title XVIII of the Social Security Act to require timely payment of properly submitted medicare claims; to the Committee on Finance.

By Mr. LAUTENBERG (for himself, Mr. BRADLEY, Mr. MOYNIHAN, Mr. HEINZ, and SPECTER):

S. 2577. A bill to insure that amounts paid for home improvements to mitigate air contaminants such as radon gas qualify for the tax deduction for medical car expenses; to the Committee on Finance.

By Mr. SPECTER (for himself and Mr. MOYNIHAN):

S. 2578. A bill to provide, through greater targeting, coordination, and structuring of services, assistance to strengthen severely economically disadvantaged individuals and families by providing greater opportunities for employment preparation, which can assist in promoting family economic stability; to the Committee on Labor and Human Resources.

By Mr. SPECTER (for himself and Mr. MOYNIHAN):

S. 2579. A bill to amend part A of title IV of the Social Security Act to promote the transition of severely economically disadvantaged individuals to unsubsidized employment.

By Mr. HELMS (for himself, Mr. EAST, and Mr. ARMSTRONG):

S.J. Res. 366. A joint resolution to disapprove the Act of the District of Columbia Council entitled the "Prohibition of Discrimination in the Provision of Insurance Act of 1986": to the Committee on Governmental Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BYRD (for himself, Mr. SASSER, and Mr. PROXMIRE):

S. Con. Res. 151. A concurrent resolution expressing the sense of the Congress on United States policy toward Afghanistan; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CRANSTON (for himself, Mr. KENNEDY, Mr. WEICKER, Mr. BRADLEY, Mr. LEVIN, and Mr. SPECTER):

S. 2570. A bill entitled the "Anti-Apartheid Action Act of 1986"; to the Committee on Finance.

(The remarks of Mr. CRANSTON and Mr. KENNEDY and the text of the legislation appear elsewhere in today's RECORD.)

By Mr. BUMPERS (for himself, Mr. BIDEN, Mr. SARBANES, Mr. HECHT, Mr. KERRY, Mr. METZENBAUM, Mr. SIMON, and Mr. KENNEDY):

S. 2571. A bill to establish the National Nuclear Reactor Safety Study Commission; to the Committee on Governmental Affairs.

NATIONAL NUCLEAR REACTOR SAFETY STUDY COMMISSION ACT

Mr. BUMPERS. Mr. President, I rise today to introduce legislation to establish an independent 12-member Commission of distinguished experts to study the Chernobyl nuclear accident and a broad range of domestic nuclear safety issues.

The accident at the Chernobyl nuclear powerplant appears to have been the most serious to date in the world use of nuclear power. Reported deaths from the accident now total 26. Hun-

dreds of people were hospitalized and over 100,000 initially evacuated. Additional evacuations of between 20,000 to 80,000 people were carried out last week. Radioactive releases have contaminated surrounding farmlands and spread beyond Soviet boundaries to other countries. There is no doubt that the accident will have profound international and domestic implications for nuclear power.

With respect to our domestic nuclear reactors, the accident raises several questions. Is an accident as serious as Chernobyl possible in the United States? What actions have we taken to prevent core meltdown accidents and to minimize their consequences, and are these actions adequate? If such an accident occured, would existing emergency evacuation plans adequately protect public safety? I would like to have some credible answers to these questions. Many of our constituents would as well.

At present, the public is receiving its information on the Soviet accident and its domestic implications in a piecemeal fashion, primarily from the media or interest groups at either end of the nuclear spectrum. Industry groups led off with an "it can't happen here" response, emphasizing the design differences between the Chernobyl reactor and most domestic reactors. Much has been made of the lack of a massive containment structure to prevent release of dangerous radiation at Chernobyl. Yet, the Chief of the Nuclear Regulatory Commission's reactor systems division said recently: "I'm not convinced personally that even if Chernobyl had a containment it would have been able to contain that event." (Washington Post, June 1, 1986.) An emphasis on containment structures also raise concerns about the Nation's reactors which lack such structures, particularly our defense production reactors, one of which—the Hanford N-reactor—also has a graphite core. Antinuclear groups have already called for a shutdown of our defense reactors.

The Nuclear Regulatory Commission, the governmental body responsible for ensuring the safety of our nuclear power plants, is divided in its response to Chernobyl. The majority of the Commissioners, focussing on what knowledge we do have about the containment design differences between Chernobyl and most U.S. plants, have testified:

Because of the significant differences between the commercial nuclear plants in operation in the United States and the Chernobyl nuclear facility in the Soviet Union, it is difficult to identify at this time any specific lessons to be learned from this accident that might be applicable to the plants we regulate. (Statement of Chairman Nunzio J. Palladino, Subcommittee on Energy and Power, Committee on Energy and Commerce, May 22, 1986.)

Commissioner Asselstine, a frequent dissenter on the NRC, testified that his fellow Commissioners had missed the broader lessons of the Chernobyl accident for nuclear safety.

To me, the lessons of Chernobyl are simple and straightforward. Given the uncertainties in containment and plant performance, the occurrence of a severe core meltdown accident over the next 20 years is unacceptable. That was the judgment of the President's commission on the Three Mile Island accident six years ago, and it is no less true today. We should return to the safety philosophy espoused by the Kemeny Commission at that time—to pursue all practical measures both to prevent core meltdown accidents from occurring and to minimize their consequences should one occur. (Statement of Commissioner James K. Asselstine, before the Subcommittee on Energy Conservation and Power, Committee on Energy and Commerce, May 22, 1986.)

Commissioner Asselstine's statement alludes to one of the basic questions I would hope this study commission would address. If indeed a U.S. type containment structure would not have prevented the release of radioactivity from the severe core meltdown at Chernobyl, the next question is, What is the probability of a core meltdown at a U.S. reactor? Interestingly, the NRC testified 1 month prior to Chernobyl that under its most recent "probalistic risk assessment," a population of 100 reactors operating over 20 years would have a cumulative probability for such an accident of 45 percent. In post-Chernobyl testimony, however, the NRC reduced this estimate to one chance in eight or 12 percent. An independent assessment of the risk of core meltdown and a discussion of the acceptability of that risk would be an appropriate component of the Study Commission's report.

I would also like the Study Commission to review the safety and management improvements which were recommended after the Three Mile Island accident and assess both the status of their implementation and their effectiveness. Since Chernobyl, the nuclear industry has pointed to the post-TMI safety improvements as further proof that a Chernobyl-type accident cannot happen here. Yet, prior to Chernobyl, many in industry complained that the post-TMI actions were costly and unnecessary.

The adequacy of our existing emergency evacuation plans is another source of concern to me and I have found information on that issue conflicting and confusing. An obvious lesson to be drawn from Chernobyl, is that we must be able to evacuate people living near nuclear plants, moving them quickly out of the path of any radioactive releases. It is hard to imagine how people living near some of our nuclear facilities, particularly those located near major metropolitan centers such as Indian Point (New York City), Zion (Chicago), and Limerick (Philadelphia), could be quickly evacuated. The appropriate size of the emergency evacuation zone should also be reexamined in light of the data on radioactive releases we have and will obtain from the Soviet Union.

Current U.S. evacuation plans call for the evacuation of a 10-mile radius around a nuclear plant while the Soviets evacuated an 18-mile zone. In addition, the Soviets recently ordered evacuations from additional areas, involving some 20,000 to 80,000 people, as a result of the Chernobyl accident.

I am well aware that the responsible Federal agencies have initiated internal reviews of relevant safety issues, and that Congress is performing its oversight function in a vigorous fashion. These efforts are essential and useful exercises. Nevertheless, I believe that an independent and comprehensive study of the Chernobyl accident and domestic nuclear power safety issues is clearly in order. Nuclear safety is a highly technical issue as well as highly charged emotional issue, and it is often difficult to find the truth between the assurances of the nuclear industry and the accusations of those opposed to nuclear power. The dissension within the Nuclear Regulatory Commission on basic safety questions only adds to the difficulty of this task. With the hope of providing the public with the most useful, unbiased information possible, I have introduced this legislation to create an independent Commission of 12 distinguished experts to study the Chernobyl accident and a broad range of domestic nuclear safety issues and report their findings to Congress and the President.

Mr. President, my cosponsors and I stand ready to work with other Senators, and particularly the distinguished chairman and members of the Environment and Public Works Committee on this legislation, which I hope will receive prompt consideration. The questions I and others have raised deserve the thoughful attention of independent experts. In 1979, President Carter appointed a similar commission to study the issues raised by the accident at Three Mile Island. The resulting Kemeny Commission report has been an important source of public information and policy recommendations. We learned a great deal from the TMI accident and I believe that the public would again be well served by a review of domestic nuclear safety issues in light of the lessons to be learned from the Chernobyl accident. I urge the Senate to support this legislation.

In short, Mr. President, I think we have dwelled entirely too much on the fact that our nuclear program is safer than the Soviets' and that is not really the relevant issue. The relevant issue is: Are our nuclear power plants as

safe as they can be and as safe as they should be?

When the shuttle exploded, it was my belief, which on hind-sight was rather naive, that NASA would do an indepth, inhouse study to determine what their safety precautions were and where they failed and so on.

I applaud the President for not accepting that idea and appointing a blue ribbon panel to investigate the entire thing. We now know that the blue ribbon panel appointed by the President brought to this Nation shocking revelations which we would have never received had it not been for that panel.

We now have five Nuclear Regulatory Commissioners, all of whom are political appointees. I think, in light of the Chernobyl accident and the fact that in 1985 the nuclear power industry in this country had the worst record of safety mishaps since TMI in 1979, it is altogether appropriate that the President and the leaders of both Houses appoint a 12-person blue ribbon panel and take such time as is necessary to reasure the people of this country that we are doing everything we can to make our nuclear power plants as safe as possible, including not only the safety of the reactors but out evacuation plans.

Mr. President, I ask unanimous consent that the bill, which I will now send to the desk, be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2571

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Reactor Safety Study Commission Act."

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress makes the following findings:

(1) The accident at the Chernobyl nuclear power plant in the Soviet Union has raised questions regarding the design, management and regulation of domestic nuclear reactors and the likelihood of a severe reactor accident occurring in the United States;

(2) More information is needed about the causes of the Chernobyl accident and the design of the reactor and the reactor enclosure before comparisons can be made with domestic nuclear reactors;

(3) Various federal and industry studies of domestic nuclear safety issues are planned or in progress in response to the Chernobyl accident, but no comprehensive study is planned to provide the general public with information about the Chernobyl accident and its implications with regard to the safety of domestic nuclear reactors, including the adequacy of existing emergency evacuation plans;

(4) The public interest would be served by an independent report on the causes and consequences of the Chernobyl accident coupled with a comprehensive review and comparative study of the design, management, and regulation of nuclear reactors in the United States.

(b) The purpose of this Act is to establish a national commission which shall report to Congress and the President on the Chernobyl accident and domestic nuclear reactor safety.

NATIONAL COMMISSION ON U.S. NUCLEAR REACTOR SAFETY

SEC. 3. (a) ESTABLISHMENT.—(1) There is established the National Commission on U.S. Nuclear Safety. The Commission shall be composed of 12 members—

(A) four of whom shall be appointed or designated by the President;

(B) two by the Majority Leader of the Senate;

(C) two by the Minority Leader of the Senate;

(D) two by the Speaker of the House of Representatives; and

(E) two by the Minority Leader of the House of Representatives.

(2) The members shall be drawn from among distinguished experts in the fields of nuclear physics, engineering, health sciences, emergency planning, law and government. The members shall not be officers or employees of the Federal Government.

(3) The President shall designate a Chairman from among the members of the Commission.

(b) FUNCTIONS.—(1) The Commission shall—

(A) review all available information pertaining to the causes and consequences of the accident at the Chernobyl nuclear reactor;

(B) compare Soviet reactor design and safety standards with those applicable to commercial U.S. reactors and U.S. government defense production reactors;

(C) review and evaluate the management and regulation of nuclear reactors in the United States, including—

(i) the adequacy of applicable U.S. safety standards, and the likely effectiveness of these standards in the event of a severe nuclear accident such as an accident involving a core meltdown or a core meltdown combined with an explosion, with particular emphasis on events of the severity of the Chernobyl accident;

(ii) the adequacy of applicable standards and plans for emergency evacuations in the event of a severe nuclear accident, including an evaluation of the status of "source term" research and safety implications of changes in the estimated "source term";

(iii) a comparison of design and safety standards applicable to the plutonium production reactors operated by the Department of Energy and those applicable to commercial reactors regulated by the Nuclear Regulatory Commission;

(iv) the implementation by the Nuclear Regulatory Commission and commercial nuclear utilities of regulatory changes and safety improvements recommended after the accident at Three Mile Island and the adequacy of those improvements;

(v) the effectiveness of utility self-regulation and self-study including the Institute for Nuclear Power Operations (INPO), the Industrial Degraded Core Rulemaking Program (IDCOR) response to the NRC's Severe Accident Policy, and the Babcock and Wilcox Owners Group study.

(D) recommend improvements in licensing and related regulatory practices.

(2) The Commission shall report its findings and recommendations to the President and the Congress within one year after the date of enactment of this Act.

(c) COMPENSATION. —Members of the Commission shall be compensated at the rate equivalent to GS-18 on the Civil Service scale of compensation, unless they already receive compensation from the United States government. All members shall be allowed travel expenses, including per diem in lieu of expenses, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(d)(1) The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

(2) The Commission may secure directly from any department or agency of the United States information necessary to enable the Commission to carry out this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(3) The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(4) The Secretary of State, the Secretary of Energy, and the Nuclear Regulatory Commission shall, to the extent permitted by law, provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary for the performance of its functions.

(d) AUTHORIZATION.—There are hereby authorized to be expended not more than $1,000,000 for the Commission.

(e) TERMINATION.—Unless otherwise extended, the Commission shall terminate 60 days after submitting its final report.

By Mr. HEINZ (for himself, Mr. SPECTER, Mr. ABDNOR, Mr. PRESSLER, Mr. BYRD, Mr. ROCKEFELLER, Mr. FORD, Mr. HEFLIN, Mr. SIMON, Mr. PELL, Mr. STENNIS, Mr. LAUTENBERG, and Mr. MATTINGLY):

S. 2573. A bill to amend the Disaster Relief Act of 1974 to provide more effective assistance to disaster and emergency victims; to the Committee on Environment and Public Works.

By Mr. HEINZ (for himself, Mr. SPECTER, Mr. ABDNOR, Mr. PRESSLER, Mr. BYRD, Mr. ROCKEFELLER, Mr. FORD, Mr. SIMON, Mr. PELL, Mr. HEFLIN, and Mr. MATTINGLY):

S. 2574. A bill to amend the Disaster Relief Act of 1974 to provide more effective assistance to disaster and emergency victims; to the Committee on Environment and Public Works.

DISASTER RELIEF LEGISLATION

● Mr. HEINZ. Mr. President, today along with my colleagues Senators SPECTER, PRESSLER, ABDNOR, BYRD, ROCKEFELLER, FORD, PELL, STENNIS, LAUTENBERG, MATTINGLY, SIMON, and HEFLIN, I am introducing two bills to improve the Federal Government's capability to assist municipalities and people victimized by natural disasters.

One bill would mandate and continue the current policy by means of which the Federal Emergency Man-

agement Agency [FEMA] provides assistance for 75 percent of all damages sustained by local communities for public works, such as roads, bridges, sewer and water systems, with States and localities providing the remaining 25 percent. This essential source of public assistance is now being jeopardized by an arbitrary rulemaking proposed by FEMA. On April 18, FEMA published proposed regulations that would reduce the Federal share of public assistance from 75 percent to 50 percent and would deny eligibility for assistance to communities in which the total damages in the State were less than $1 per capita.

These reductions would drastically limit both the number of instances and the amount of funds which would be provide to communities hit by disasters. Under the $1 per capita threshold, the last six Presidentially declared disasters in Pennsylvania would not have qualified for a disaster declaration and corresponding FEMA assistance. The last disaster that would have qualified for assistance under this restriction would have been the Johnstown flood in 1977.

Pennsylvania is by no means the only State which would be affected. Nationwide, 61 of the last 111 Presidentially declared disasters would have been ruled ineligible for assistance. Kentucky reports that it would never have received Federal public assistance had these rules been in effect when the Disaster Relief Act was enacted in 1974. The new formula would have reduced by 73 percent the number of recent disaster declarations in FEMA Region V, which includes the States of Illinois, Indiana, Ohio, Michigan, and Wisconsin.

The second bill would address comprehensively the type and manner of FEMA disaster assistance. It would clarify such matters as removal of debris, provision of temporary housing, and availability of information to disaster victims.

Mr. President, I know all too well from personal experience how important this type of assistance can be to localities and their citizens. In the past year, several areas of my home State of Pennsylvania have been devastated by a series of tornadoes and floods. During this period, a total of 187 municipalities in Pennsylvania experienced in excess of $15 million in eligible damages and received more than $10 million in public assistance from FEMA. Reducing the Federal share to 50 percent would have cost the Commonwealth an additional $4.1 million for public assistance in 1985. Furthermore, under the restrictive $1 per capita standard, none of these disasters would have qualified for public assistance, leaving the State and local governments to shoulder the entire $15 million in damage to public property.

Last May, tornadoes in northwestern Pennsylvania killed 65 people, destroyed or damaged over 800 homes, and caused an estimated $250 million in damages. Fortunately, in that instance, the President quickly issued a Federal disaster declaration, enabling my constituents and their local governments to take advantage of Federal disaster programs. As a result, affected areas and individuals received a total of $4.7 million in assistance from FEMA.

By codifying FEMA cost-sharing practices, we can ensure that the Federal Government will continue to protect those units of government in the weakest condition—small towns devastated by disasters. Whole communities would be ghost towns today were it not for public assistance provided by FEMA in the wake of natural disasters.

Mr. President, I urge my colleagues to support these two important pieces of legislation, and I ask that these two bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2573

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PURPOSES.

The purposes of this Act are—

(1) to help insure that Federal assistance available under the Disaster Relief Act of 1974 is distributed to eligible individuals, State and local governments, and non-profit organizations in a timely, non-discriminatory, and consistent manner; and

(2) to establish cost sharing guidelines for programs established by such Act that will—

(A) provide more timely assistance to disaster victims,

(B) provide fixed standards for use by all Federal, State, and local emergency management officials in determining eligibility for and amounts of such assistance, and

(C) avoid uncertainty and confusion concerning cost sharing when Presidential disaster declarations are made.

SEC. 2. ESTABLISHMENT OF COST SHARING FORMULAS.

Title IV of the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.) is amended by adding at the end the following new section:

"FEDERAL SHARE OF ASSISTANCE

"SEC. 420. (a)(1) The Federal share of assistance under section 402 or 403 of this Act—

"(A) shall be at least 75 percent of the actual cost of providing assistance under such section, and

"(B) shall be made only on condition that the remaining portion of such cost is paid from funds made available by a State or local government.

"(2) Where a State or local government is unable immediately to pay its share the President is authorized to advance to such government such 25 percent share, and any such advance shall be repaid to the United States.

"(b) The Federal share of assistance under sections 404, 407, and 413 shall be equal to 100 percent of the actual cost of providing assistance under such sections.

"(c) No State shall be ruled ineligible to receive assistance under subsections (a) and (b) of this section by virtue of an arithmetic formula based on income or population if such State has qualified for Federal disaster assistance within the past 24 months."

S. 2574

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PURPOSES.

The purposes of this Act are to provide for—

(1) more effective utilization of State and local resources in disaster relief efforts;

(2) the immediate establishment of disaster assistance centers following a Presidential declaration of a major disaster under the Disaster Relief Act of 1974;

(3) availability of adequate and timely information to disaster victims regarding assistance available under such Act;

(4) removal of debris under such Act in a manner that protects the public health and safety;

(5) provision of temporary housing assistance under such Act in a timely and reasonable manner;

(6) increases in the maximum value of individual and family grants under such Act to reflect increases in the cost-of-living;

(7) reimbursement of State and local governments under such Act within a reasonable time after the submission of all necessary documentation;

(8) prompt assistance under such Act to all who are eligible for relief; and

(9) improvement in the practical and fiscal relationships that exist between Federal, State, and local emergency management officials.

SEC. 2. AUTHORIZATION OF DISASTER ASSISTANCE CENTERS.

Section 303 of the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.) is amended by adding at the end the following new subsection:

"(d)(1) The Federal coordinating officer shall, as soon as is practicable after a Presidential declaration of a major disaster, establish local disaster assistance centers.

"(2) Disaster assistance centers shall—

"(A) gather and disseminate information regarding Federal, State, and local assistance programs,

"(B) accept applications for such programs, and

"(C) counsel individuals, families, and businesses concerning all available Federal, State, or local assistance for which they may be eligible.

"(3) The Federal coordinating officer shall ensure that, to the greatest extent practicable, disaster assistance centers shall be staffed with persons recommended by the State coordinating officer.".

SEC. 3. CLARIFICATION OF RESPONSIBILITY TO REMOVE CERTAIN DEBRIS AND DYING TIMBER.

Section 403 of the Disaster Relief Act of 1974 is amended—

(1) by redesignating subsection (b) as subsection (c), and

(2) by inserting after subsection (a) the following new subsection:

"(b)(1) The President shall ensure that debris shall be removed from any area on private property that is within 200 feet off a residence situated on such property.

"(2) Trees that are dying shall be considered debris eligible for removal from residential lots when such trees are situated within 200 feet of a residence.".

SEC. 4. TEMPORARY HOUSING ASSISTANCE IMPROVEMENTS.

Section 404 of the Disaster Relief Act of 1974 is amended by adding at the end the following new subsection:

"(e)(1) Within 20 days after a Presidential declaration of a major disaster, persons living in the affected area who qualify for temporary housing assistance under this section shall be identified and provided at least two offers of such assistance.

"(2) Applicants for temporary housing assistance under this section shall be informed of—

"(A) all available forms of such assistance,

"(B) any specific criteria which must be met to qualify for each type of assistance that is available, and

"(C) any limitations which apply to each type of assistance.

"(3) Offers of assistance under this section shall—account for—

"(A) the location of and travel time to—

"(i) the applicant's place of business; and

"(ii) schools which the applicant or members of the applicant's family who reside with the applicant attend;

"(B) the applicant's need for access to—

"(i) the site of a home or place of business whose destruction or damage is the result of the major disaster which created the applicant's need for assistance under this section: and

"(ii) crops or livestock which the applicant tends in the course of any involvement in farming which provides 25 percent or more of the applicant's annual income; and

"(C) the applicant's desire to remain in the same community.

"(4) An offer of assistance under this section shall remain available for acceptance for 60 days after the date on which such offer is made.

"(5)(A) If an applicant's eligibility for assistance is withdrawn after two offers of assistance have been made to such applicant, or if an offer of assistance is withdrawn after the 60 day period referred to in paragraph (4)—

"(i) the applicant shall, upon request, be granted a hearing to show cause why such eligibility for assistance of offer of assistance should not be withdrawn;

"(ii) the procedures for such hearing shall be the same as those which apply in a hearing to dispute a proposed termination of or eviction from temporary housing assistance and shall be fully explained to the applicant; and

"(iii) the applicant shall be given assistance in preparing for and presenting arguments at such hearing.

"(B) A final determination on any withdrawal of eligibility or an offer of assistance shall be made within ten working days after the date on which a hearing is requested under this paragraph."

SEC. 5. INCREASE IN AMOUNTS OF INDIVIDUAL AND FAMILY GRANTS.

Section 408(b) of section 601 of the Disaster Relief Act of 1974 (Public Law 93-188; 42 U.S.C. 5121 et seq.) is amended by striking "$5,000" and inserting "$7,500".

PROCESS IN CERTAIN GRANTS OF ASSISTANCE

Subsection (a) of section 601 of the Disaster Relief Act of 1974 is amended—

(1) by inserting "(1)" after "(a)", and

(2) by adding at the end the following new paragraph:

"(2) Rules and regulations authorized by paragraph (1) shall provide that payment of any assistance under this Act to a State or local government or to an eligible non-profit organization shall be completed within 60 days after the date on which an applicant submits a claim after completion of the approved work.●

● Mr. FORD. Mr. President, I wish I could say that I am pleased to join my friend from Pennsylvania in sponsoring these two bills, but I cannot. The reason for my displeasure is that there should be no need for such legislation. If there were only one role for the Federal Government after providing for the national defense, it should be disaster assistance to the States. But the Federal Emergency Management Agency—created to come to the rescue of the States in time of catastrophe—wants to cut back drastically on the assistance it provides. That is shameful.

So, you see why I take no pleasure in sponsoring this legislation. It is introduced only to prevent FEMA from making a serious mistake. The Agency's proposed rule would be devastating to Kentucky, Pennsylvania, Illinois, Indiana, Ohio, Michigan, and Wisconsin. However, I also suspect it would be just as harmful to States of the Midwest and the Great Plains, which regularly are hit by tornados—to California, which is hit by mudslides and brushfires every year—to the Gulf and Atlantic Coast States regularly lying in the path of hurricanes.

In fact, Mr. President, if the legislation we are introducing today is not signed into law before FEMA's proposed rule becomes final, every State in the Union will run the risk of being unable to respond adequately if hit by a natural disaster. I commend the Senator from Pennsylvania [Mr. HEINZ], for recognizing the potential danger of FEMA's rule, and for taking action to prevent it; and I hope my colleagues will join us in this effort.●

● Mr. LAUTENBERG. Mr. President, I am pleased to join today with my colleague from Pennsylvania [Senator HEINZ] in introducing legislation to retain current Federal Emergency Management Agency policy on disaster relief.

In May, the Federal Emergency Management Agency issued draft regulations on disaster relief which, unless Congress intervenes, will become effective in October. The purpose of these regulations is to save FEMA money. The impact of the regulations is to make many communities suffering natural disasters ineligible for Federal assistance.

Mr. President, of the last 111 Presidential declarations of disasters, only 61 would be eligible for assistance under the new FEMA rules. Those found eligible for assistance would find themselves called upon to cover a far higher percentage of the cleanup and rehabilitation costs. FEMA would establish a scale of ability to pay based on per capita income. The fairness of such a sliding scale is worthy of debate and should, if it is to be implemented at all, be done legislatively and not by regulation.

To provide an example of the impact of these new regulations in New Jersey, I asked my State Office of Emergency Management to compare the cost to communities devastated by the 1984 spring floods. Passaic County, NJ had $1,664,000 in damages. After the Presidential declaration of disaster, the Federal Government paid $1,247,000 with the local match being $416,000. Under the new regulations, the local share would be $1,013,000, with FEMA covering $650,000.

Mr. President, historically, natural disasters have not been considered to be the fault of local communities and the Federal Government has attempted to quickly provide emergency relief. Until recently, the Federal Government covered 100 percent of disaster relief costs. In order to control costs. FEMA, without legislative mandate, began the 75/25 percent match with localities. That practice has not proven to be burdensome in most circumstances. Now it appears that FEMA wants to shift the burden of disaster relief primarily to States and localities.

Mr. President, the bill we are introducing will, for the first time, put in statute the 75/25 percent matching requirement. The bill will prevent FEMA from imposing, by regulation, the per capita scale which would rule States and localities ineligible for relief. The bill will prevent FEMA from adopting a 50/50 percent match.

Mr. President, as ranking minority member of the Environment and Public Works Committee's Subcommittee on Regional and Community Development, I will push for hearings on this issue. Disaster relief is one of the basic functions of Government. I strongly favor efforts to reduce unnecessary Federal spending, but I do not support efforts to save money at the expense of communities devastated by floods, hurricanes, coastal storms and other natural disasters.

I am pleased to be an original cosponsor of this legislation and urge its swift consideration and adoption.●

By Mr. LEAHY (for himself and Mr. MATHIAS):

S. 2575. A bill to amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes; to the Committee on the Judiciary.

ELECTRONIC COMMUNICATIONS PRIVACY ACT

Mr. LEAHY. Mr. President, today I am introducing the Electronic Communications Privacy Act with Senator

MATHIAS. The need for this legislation to update our legal privacy protections and bring them in line with modern telecommunications and computer technology is clear if we consider some simple illustrations.

In the first example, two business people are discussing their company's sensitive financial data over the telephone. Unknown to them, a competitor is using a phone tap to listen in on their conversation. Across town, a police officer has a hunch that Jane Doe is involved in drug trafficking. He goes to the Post Office and tells the postal clerk that he wants to intercept, open and read Ms. Doe's mail, and then have it resealed and delivered.

We would all agree that the competitor eavesdropper's conduct is wrong and the policeman's conduct is wrong. Their conduct is also illegal.

Now let me change the scene just a little and remind my colleagues that each example is probably going on somewhere in the United States right now.

Instead of the two business people discussing financial matters over the telephone, they use a video teleconference system which displays their data on their video screens. The same data is picked up by their competitor. Instead of going to the Post Office, the police officer goes to an electronic mail company. Ms. Doe is a user of the system and the officer asks to see all of Ms. Doe's messages.

The only real difference between the eavesdropper's and the policeman's conduct is that in the second example, traditional telephone or mail communications have been replaced by one of the great technological innovations available in America today. Many of our constituents who use those new forms of technology in their homes and in their businesses would be surprised to learn that the same conduct is not clearly illegal once the electronic component is added to the story.

The Electronic Communications Privacy Act is designed to update our law to provide a reasonable level of Federal privacy protection to these new forms of communications. It is the culmination of 2 years of hard work. I want to commend the Senator from Maryland, the chairman of the Senate Judiciary Committee's Subcommittee on Patents, Copyrights and Trademarks for his support and his efforts in developing this legislation.

I also want to congratulate Congressman BOB KASTENMEIER and Congressman CARLOS MOORHEAD, the chairman and ranking minority member of the House Judiciary Committee's Subcommittee on Courts, Civil Liberties and the Administration of Justice. The Congressmen and their staffs saw the House Judiciary Committee unanimously pass this landmark legislation last week.

Mr. President, let me just briefly describe the limitations of current law and the development of this legislation. The Federal wiretap statute, title III of the Omnibus Crime and Safe Streets Act of 1968 is our primary law protecting the security and privacy of business and personal communications.

Eighteen years ago, when title III was written, Congress could not appreciate—or in some cases even contemplate—telecommunications and computer technology we are starting to take for granted today: electronic mail, computer-to-computer data transmissions, cellular telephones, paging devices, and video teleconferencing. Lawmakers in 1968 could not imagine the extensive use of computers for the storage and processing of information which has put a wide range of personal and business records, including health, financial, and other records, "on-line," or the ready availability of electronic hardware, including high-technology video and radio surveillance systems, making it possible for overzealous law enforcement agencies, industrial spies, and just plain snoops to intercept the personal or proprietary communications of others.

Nor could Congress envision the dramatic changes in the telephone industry which we have witnessed in the last few years. Today, a phone call can be carried by wire, microwave, or fiber optics. Even a local call may follow an interstate path. And an ordinary phone call can be transmitted in different forms—digitized voice, data or video. In addition, since the divestiture of AT&T and deregulation, many different companies, not just common carriers, offer a wide variety of telephone and other communications services.

When Congress enacted title III, it had in mind one kind of communication—voice—and one kind of transmission—a transmission via a common carrier analog—or regular voice—telephone network. Congress chose to cover only the "aural acquisition" of the contents of a common carrier wire communication. The Supreme Court has interpreted that language to mean that to be covered by title III, a communication must be capable of being overheard.

Title III of the Omnibus Crime and Safe Streets Act is hopelessly out of date. It applies only to interceptions of voice communications transmitted via common carrier. It does not cover data communications. It does not specify whether or how communications made using electronic pagers or the private transmissions of video signals like those used in teleconferencing are protected.

Our 2-year effort to deal with this gap between the law and technological innovation began in 1984 when I asked the Attorney General whether he believed interceptions of electronic mail and computer-to-computer communications were covered by the Federal wiretap laws.

The Criminal Division of the Department of Justice replied that Federal law protects electronic communications against unauthorized acquisition only where a reasonable expectation of privacy exists. Underscoring the need for this legislation, the Department concluded: "In this rapidly developing area of communications which range from cellular nonwire telephone connections to microwave-fed computer terminals, distinctions, such as—whether there does or does not exist a reasonable expectation of privacy—are not always clear or obvious."

Hearings in the 98th Congress held by Senator MATHIAS and myself in the Senate Judiciary Committee and by Congressman KASTENMEIER in the House Judiciary Committee demonstrated the scope of these problems and the need to act. We began working with the Justice Department and many individuals, businesses, industry groups, and civil liberty groups. Those groups were concerned primarily about the need to update the law to better protect communications privacy. They also pointed out that the absence of such privacy protections may be inhibiting further technological development in this country and that enactment of such privacy protections will encourage the full use of modern computer technology available in America today.

During those discussions, two things became very clear. First, the need to address unauthorized acquisitions of information is very real. Communications companies have been faced with Government demands, unaccompanied by a warrant, for access to the messages contained in electronic mail systems. And the unwanted private intruder, whether a competitor or a malicious teenager, can do a great deal of damage before being discovered—if he or she is ever discovered. Second, encryption is not the answer. It can be broken. More importantly, the law must protect private communications from interception by others.

The product of our discussions with the Department of Justice and private groups interested in promoting communications privacy, while protecting legitimate law enforcement needs and promoting technological innovation, was S. 1667, which Senator MATHIAS and I introduced last September. Congressmen KASTENMEIER and MOORHEAD introduced identical legislation in the House.

Shortly thereafter, the Office of Technology Assessment issued its report, "Electronic Surveillance and Civil Liberties." Again, the need for

this legislation was underlined. OTA concluded that a message sent by means of an electronic mail system could be intercepted and that its contents could be disclosed to an unintended snoop. The Office of Technology Assessment study also concluded that current legal protections for electronic mail are "weak, ambiguous, or nonexistent," and that "electronic mail remains legally as well as technically vulnerable to unauthorzed surveillance."

Since that time, the Subcommittee on Patents, Copyrights, and Trademarks and the House Judiciary Committee's Subcommittee on Courts, Civil Liberties, and the Administration of Justice have held extensive hearings on the legislation. During those hearings, the Department of Justice and radio hobbyists raised some concerns about the bill. Those concerns are addressed in this new version of the Electronic Communications Privacy Act we are introducing today. This is the same language that the House Judiciary Committee passed by a vote of 34 to 0 last week.

The bill will extend coverage of title III of the Omnibus Crime and Safe Streets Act beyond only voice communications to include video and data communications. It recognizes that private carriers and common carriers perform so many of the same functions today that a distinction between privacy standards is not warranted. The bill also creates penalties for the unauthorized access of electronically stored information if that information is obtained or altered.

In order to address radio hobbyists' concerns, we modified the original language of S. 1667 to clarify that intercepting traditional radio services is not unlawful. Under this revised electronic communications privacy bill, cellular phones, private and public microwave services and voice or display pagers are protected against interception. Cordless telephones and tone-only pagers are not.

The Electronic Communications Privacy Act provides standards by which law enforcement agencies may obtain access to both electronic communications and the records of an electronic communications system. These provisions are designed to protect legitimate law enforcement needs while minimizing intrusions on the privacy of system users as well as the business needs of electronic communications system providers.

At the request of the Justice Department, we strengthened the current wiretap law from a law enforcement perspective. Specifically, we expanded the list of felonies for which a voice wiretap order may be issued and the list of Justice Department officials who may apply for a court order to place a wiretap. We also added a provision making it easier for law enforcement officials to deal with a target who repeatedly changes telephones to thwart interception of his communications, and created criminal penalties for those who notify a target of a wiretap in order to obstruct it.

The bill creates a statutory framework for the authorization and issuance of an order for a pen register. It also creates civil penalties for the users of electronic communications services whose rights under the bill are violated. Finally, it preserves the careful balance governing electronic surveillance for foreign intelligence and counterintelligence purposes embodied in the Foreign Intelligence Surveillance Act of 1978. And it provides a clear procedure for access to telephone toll records in counterintelligence investigations.

Mr. President, the subcommittee staff has prepared a more detailed summary of the bill. I ask unanimous consent that the summary, along with the text of the bill, be printed in the RECORD following my remarks.

From the beginning of our history, first-class mail has had the reputation of preserving privacy while promoting commerce. It is high time we updated our laws so that we can say the same about new forms of technology which are being used side by side with first-class mail. A broad coalition of businesses, industry groups, civil liberties groups, and privacy groups are asking us to do that by enacting the Electronic Communications Privacy Act. The Department of Justice also strongly supports this legislation, and I look forward to working with my colleagues to see it passed and signed into law this year.

In closing, let me just thank the staff who have worked so hard, not only in drafting a good bill, but in working together until they successfully addressed the concerns raised during the hearings. The bill now enjoys the broadest possible support and is ready for prompt passage in the House and Senate, thanks to their efforts.

There being no objection, the previously mentioned material was ordered to be printed in the RECORD, as follows:

S. 2575

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Electronic Communications Privacy Act of 1986".

TITLE I—INTERCEPTION OF COMMUNICATIONS AND RELATED MATTERS

SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF COMMUNICATIONS.

(a) DEFINITIONS.—Section 2510(1) of title 18, United States Code, is amended—

(A) by striking out "any communication" and inserting "any aural transfer" in lieu thereof;

(B) by inserting "(including the use of such connection in a switching station)" after "reception";

(C) by striking out "as a common carrier"; and

(D) by inserting before the semicolon at the end the following: "or communications affecting interstate or foreign commerce, but such term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit".

(2) Section 2510(2) of title 18, United States Code, is amended by inserting before the semicolon at the end the following: ", but such term does not include any electronic communication".

(3) Section 2510(4) of title 18, United States Code, is amended—

(A) by inserting "or other" after "aural"; and

(B) by inserting ", electronic," after "wire".

(4) Section 2510(8) of title 18, United States Code, is amended by striking out "identity of the parties to such communication or the existence,".

(5) Section 2510 of title 18, United States Code, is amended—

(A) by striking out "and" at the end of paragraph (10);

(B) by striking out the period at the end of paragraph (11) and inserting a semicolon in lieu thereof; and

(C) by adding at the end the following:

"(12) 'electronic communication' means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include—

"(A) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;

"(B) any wire or oral communication;

"(C) any communication made through a tone-only paging device; or

"(D) any communication from a tracking device (as defined in section 3117 of this title);

"(13) 'user' means any person or entity who—

"(A) uses an electronic communication service; and

"(B) is duly authorized by the provider of such service to engage in such use;

"(14) 'electronic communications system' means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of such communications;

"(15) 'electronic communication service' means any service which provides to users thereof the ability to send or receive wire or electronic communications;

"(16) 'readily accessible to the general public' means, with respect to a radio communication, that such communication is not—

"(A) scrambled or encrypted;

"(B) transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of such communication;

"(C) carried on a subcarrier or other signal subsidiary to a radio transmission;

"(D) transmitted over a communication system provided by a common carrier, unless the communication is a tone only paging system communication; or

"(E) transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless, in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary service, the communication is a two-way voice communication by radio;

"(17) 'electronic storage' means—

"(A) any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and

"(B) any storage of such communication by an electronic communication service for purposes of backup protection of such communication; and

"(18) 'aural transfer' means a transfer containing the human voice at any point between and including the point of origin and the point of reception.".

(b) EXCEPTION WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—

(1) Section 2511(2)(d) of title 18, United States Code, is amended by striking out "or for the purpose of committing any other injurious act".

(2) Section 2511(2)(f) of title 18, United States Code, is amended—

(A) by inserting "or chapter 121" after "this chapter"; and

(B) by striking out "by" the second place it appears and inserting in lieu thereof ", or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing".

(3) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

"(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

"(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

"(ii) to intercept any radio communication which is transmitted—

"(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

"(II) by any governmental, law enforcement, civil defense, or public safety communications system, including police and fire, readily accessible to the general public;

"(III) by a station operating on a frequency assigned to the amateur, citizens band, or general mobile radio services; or

"(IV) by any marine or aeronautical communications system;

"(iii) to engage in any conduct which—

"(I) is prohibited by section 633 of the Communications Act of 1934; or

"(II) is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act;

"(iv) to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station, to the extent necessary to identify the source of such interference; or

"(v) for other users of the same frequency to intercept any radio communication made through a common carrier system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system, if such communication is not scrambled encrypted.

"(h) It shall not be unlawful under this chapter—

"(i) to use a pen register (as that term is defined for the purposes of chapter 206 (relating to pen registers) of this title);

"(ii) for a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of such service; or

"(iii) to use a device that captures the incoming electronic or other impulses which identify the numbers of an instrument from which a wire communication was transmitted.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Chapter 119 of title 18, United States Code, is amended—

(A) in each of sections 2510(5), 2510(8), 2510(9)(b), 2510(11), and 2511 through 2519 (except sections 2516(1) and 2518(10)), by striking out "wire or oral" each place it appears (including in any section heading) and inserting "wire, oral, or electronic" in lieu thereof; and

(B) in section 2511(2)(b), by inserting "or electronic" after "wire".

(2) The heading of chapter 119 of title 18, United States Code, is amended by inserting "and electronic communications" after "wire".

(3) The item relating to chapter 119 in the table of chapters at the beginning of part I of title 18 of the United States Code is amended by inserting "and electronic communications" after "Wire".

(4) Section 2510(5)(a) of title 18, United States Code, is amended by striking out "communications common carrier" and inserting "provider of wire or electronic communication service" in lieu thereof.

(5) Section 2511(2)(a)(i) of title 18, United States Code, is amended—

(A) by striking out "any communication common carrier" and inserting "a provider of wire or electronic communication service" in lieu thereof;

(B) by striking out "of the carrier of such communication" and inserting "of the provider of that service" in lieu thereof; and

(C) by striking out ": *Provided*, That said communication common carriers" and inserting ", except that a provider of wire communication service to the public" in lieu thereof.

(6) Section 2511(2)(a)(ii) of title 18, United States Code is amended—

(A) by striking out "communication common carriers" and inserting "providers of wire or electronic communication service" in lieu thereof;

(B) by striking out "communication common carrier" each place it appears and inserting "provider of wire or electronic communication service" in lieu thereof; and

(C) by striking out "if the common carrier" and inserting "if such provider" in lieu thereof.

(7) Section 2512(2)(a) of title 18, United States Code is amended—

(A) by striking out "a communications common carrier" the first place it appears and inserting "a provider of wire or electronic communication service" in lieu thereof; and

(B) by striking out "a communications common carrier" the second place it appears and inserting "such a provider" in lieu thereof; and

(C) by striking out "communications common carrier's business" and inserting "business of providing that wire or electronic communication service" in lieu thereof.

(8) Section 2518(4) of title 18, United States Code, is amended by striking out "communication common carrier" and inserting "provider of electronic communication service" in lieu thereof.

(d) PENALTIES MODIFICATION.—(1) Section 2511(1) of title 18, United States Code, is amended by striking out "shall be" and all that follows through "or both" and inserting in lieu thereof "shall be punished as provided in subsection (4)".

(2) Section 2511 of title 18, United States Code, is amended by adding after the material added by section 102 the following:

"(4)(a) Except as provided in paragraph (b) of this subsection, whoever violates subsection (1) of this section shall be fined under this title or imprisoned not more than five years, or both.

"(b) If the offense is a first offense under paragraph (a) of this subsection and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) is a radio communication, then—

"(i) if the communication is not the radio portion of a cellular telephone communication, the offender shall be fined under this title or imprisoned not more than one year, or both; and

"(ii) if the communication is the radio portion of a cellular telephone communication, the offender shall be fined not more than $500 or imprisoned not more than six months, or both.

"(c) Conduct otherwise an offense under this subsection that consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted to a broadcasting station for purposes of retransmission to the general public is not an offense under this subsection unless the conduct is for the purposes of direct or indirect commercial advantage or private financial gain.".

(e) EXCLUSIVITY OF REMEDIES WITH RESPECT TO ELECTRONIC COMMUNICATIONS.—Section 2518(10) of title 18, United States Code, is amended by adding at the end the following:

"(c) The remedies and sanctions described in this chapter with respect to the interception of electronic communications are the only judicial remedies and sanctions for nonconstitutional violations of this chapter involving such communications.".

SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.

Section 2511 of title 18, United States Code, is amended by adding at the end the following:

"(3)(A) Except as provided in subparagraph (B) of this paragraph, a person or entity providing an electronic communication service to the public shall not willfully divulge the contents of any communication (other than one to such person or entity, or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

"(B) A person or entity providing electronic communication service to the public may divulge the contents of any such communication—

"(i) as otherwise authorized in section 2511(2)(a) or 2517 of this title;

"(ii) with the lawful consent of the originator or any addressee or intended recipient of such communication;

"(iii) to a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or

"(iv) which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.".

SEC. 103. RECOVERY OF CIVIL DAMAGES.

Section 2520 of title 18, United States Code, is amended to read as follows:

"§ 2520. Recovery of civil damages authorized

"(a) IN GENERAL.—Any person whose wire, oral, or electronic communication is intercepted, disclosed, or willfully used in violation of this chapter may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In an action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c) and punitive damages in appropriate cases; and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) COMPUTATION OF DAMAGES.—The court may assess as damages in an action under this section whichever is the greater of—

"(1) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

"(2) statutory damages of whichever is the greater of $100 a day for each day of violation or $10,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense against any civil or criminal action brought under this chapter or any other provision of law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first has a reasonable opportunity to discover the violation.".

SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT OFFICIALS.

Section 2516(1) of title 18 of the United States Code is amended by striking out "or any Assistant Attorney General" and inserting in lieu thereof "any Assistant Attorney General, any acting Assistant Attorney General, or any Deputy Assistant Attorney General in the Criminal Division".

SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH INTERCEPTION IS AUTHORIZED.

(a) WIRE AND ORAL INTERCEPTIONS.—Section 2516(1) of title 18 of the United States Code is amended—

(1) in paragraph (c)—

(A) by inserting "section 751 (relating to escape)," after "wagering information),";

(B) by striking out "2314" and inserting "2312, 2313, 2314," in lieu thereof;

(C) by inserting "the second section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), section 1203 (relating to hostage taking), section 1029 (relating to fraud and related activity in connection with access devices), section 3146 (relating to penalty for failure to appear), section 3521(b)(3) (relation to witness relocation and assistance), section 32 (relating to destruction of aircraft or aircraft facilities)," after "stolen property),";

(D) by inserting "section 1952A (relating to use of interstate commerce facilities in the commission of murder for hire), section 1952B (relating to violent crimes in aid of racketeering activity)," after "1952 (interstate and foreign travel or transportation in aid of racketeering enterprises),"; and

(E) by inserting ", section 115 (relating to threatening or retaliating against a Federal official), the section in chapter 65 relating to destruction of an energy facility, and section 1341 (relating to mail fraud)," after "section 1963 (violations with respect to racketeer influenced and corrupt organizations)";

(2) by striking out "or" at the end of paragraph (g);

(3) by inserting after paragraph (g) the following:

"(h) any felony violation of sections 2511 and 2512 (relating to interception and disclosure of certain communications and to certain intercepting devices) of this title;

"(i) the location of any fugitive from justice from an offense described in this section; or"; and

(4) by redesignating paragraph (h) as paragraph (j).

(b) INTERCEPTION OF ELECTRONIC COMMUNICATIONS.—Section 2516 of title 18 of the United States Code is amended by adding at the end the following:

"(3) Any attorney for the Government (as such term is defined for the purposes of the Federal Rules of Criminal Procedure) may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant, in conformity with section 2518 of this title, an order authorizing or approving the interception of electronic communications by an investigative or law enforcement officer having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of any Federal felony.".

SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF ORDERS.

(a) PLACE OF AUTHORIZED INTERCEPTION.—Section 2518(3) of title 18 of the United States Code is amended by inserting "(and outside that jurisdiction but within the United States in the case of a mobile interception device authorized by a Federal court within such jurisdiction)" after "within the territorial jurisdiction of the court in which the judge is sitting".

(b) REIMBURSEMENT FOR ASSISTANCE.—Section 2518(4) of title 18 of the United States Code is amended by striking out "at the prevailing rates" and inserting in lieu thereof "for reasonable expenses incurred in providing such facilities or assistance".

(c) COMMENCEMENT OF 30-DAY PERIOD AND POSTPONEMENT OF MINIMIZATION.—Section 2518(5) of title 18 of the United States Code is amended—

(1) by inserting after the first sentence the following: "Such thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered."; and

(2) by adding at the end the following: "In the event the intercepted communication is in a code or foreign language, and an expert in that foreign language or code is not reasonable available during the interception period, minimization may be accomplished as soon as practicable after such interception. An interception under this chapter may be conducted in whole or in part by Government personnel, or by an individual operating under a contract with the Government, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.".

(d) ALTERNATIVE TO DESIGNATING SPECIFIC FACILITIES FROM WHICH COMMUNICATIONS ARE TO BE INTERCEPTED.—(1) Section 2518(1)(b)(ii) of title of the United States Code is amended by inserting "except as provided in subsection (11)," before "a particular description".

(2) Section 2518(3)(d) of title 18 of the United States Code is amended by inserting "except as provided in subsection (11)," before "there is".

(3) Section 2518 of title 18 of the United States Code is amended by adding at the end of the following:

"(11) The requirements of subsections (1)(b)(ii) and (3)(d) of this section relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if—

"(i) in the case of an application with respect to the interception of an oral communication—

"(I) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(II) the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and

"(III) the judge finds that such specification is not practical; and

"(ii) in the case of an application with respect to a wire or electronic communication—

"(I) the application is by a Federal investigative or law enforcement officer and is approved by the Attorney General, the Deputy Attorney General, the Associate Attorney General, an Assistant Attorney General, or an acting Assistant Attorney General;

"(II) the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities; and

"(III) the judge finds that such purpose has been adequately shown.

"(12) An interception of a communication under an order with respect to which the requirements of subsections (1)(b)(ii) and (3)(d) of this section do not apply by reason of subsection (11) shall not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order.".

(4) Section 2519(1)(b) of title 18, United States Code, is amended by inserting "(including whether or not the order was an order with respect to which the requirements of sections 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply by reason of section 2518(11) of this title)" after "applied for".

SEC. 107. INTELLIGENCE ACTIVITIES.

(A) IN GENERAL.—Nothing in this Act or the amendments made by this Act constitutes authority for the conduct of any intelligence activity.

(b) CERTAIN ACTIVITIES UNDER PROCEDURES APPROVED BY THE ATTORNEY GENERAL.—Nothing in chapter 119 or chapter 121 of title 18, United States Code, shall affect the conduct, by officers or employees of the United States Government in accordance with other applicable Federal law, under procedures approved by the Attorney General of activities intended to—

(1) intercept encrypted or other official communications of United States executive branch entities or United States Government contractors for communications security purposes;

(2) intercept radio communications transmitted between or among foreign powers or agents of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978; or

(3) access an electronic communication system used exclusively by a foreign power or agent of a foreign power as defined by the Foreign Intelligence Surveillance Act of 1978.

SEC. 108. MOBILE TRACKING DEVICES.

(a) IN GENERAL.—Chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"§ 3117. Mobile tracking devices

"(a) IN GENERAL.—If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device, such order may authorize the use of that device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction.

"(b) DEFINITION.—As used in this section, the term 'tracking device' means an electronic or mechancial device which permits the tracking of the movement of a person or object.".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of chapter 205 of title 18, United States Code, is amended by adding at the end the following:

"3117. Mobile tracking devices.".

SEC. 109. WARNING SUBJECT OF SURVEILLANCE.

Section 2232 of title 18, United States code, is amended—

(1) by inserting "(a) PHYSICAL INTERFERENCE WITH SEARCH.—" before "Whoever" the first place it appears;

(2) by inserting "(b) NOTICE OF SEARCH.—" before "Whoever" the second place it appears; and

(3) by adding at the end the following:

"(c) NOTICE OF CERTAIN ELECTRONIC SURVEILLANCE.—Whoever, having knowledge that a Federal investigative or law enforcement officer has been authorized or has applied for authorization under chapter 119 to intercept a wire, oral, or electronic communication, in order to obstruct, impede, or prevent such interception, gives notice of attempts to give notice of the possible interception to any person shall be fined under this title or imprisoned not more than five years, or both.

"Whoever, having knowledge that a Federal officer has been authorized or has applied for authorization to conduct electronic surveillance under the Foreign Intelligence Surveillance Act (50 U.S.C. 1801, et seq.), in order to obstruct, impede, or prevent such activity, gives notice or attempts to give notice of the possible activity to any person shall be fined under this title or imprisoned not more than five years, or both.".

SEC. 110. INJUNCTIVE REMEDY.

(a) IN GENERAL.—Chapter 119 of title 18, United States Code, is amended by adding at the end the following:

"§ 2521. Injunction against illegal interception

"Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a felony violation of this chapter, the Attorney General may initiate a civil action in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 119 of title 18, United States Code, is amended by adding at the end thereof the following:

"2521. Injunction against illegal interception.".

SEC. 111. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any interception pursuant to section 2516(2) of title 18 of the United States Code which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such interception occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of State law conforming the applicable State statute with chapter 119 of title 18, United States Code, as so amended; or

(2) the date two years after the date of the enactment of this Act.

TITLE II—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

SEC. 201. TITLE 18 AMENDMENT.

Title 18, United States Code, is amended by inserting after chapter 119 the following:

"CHAPTER 121—STORED WIRE AND ELECTRONIC COMMUNICATIONS AND TRANSACTIONAL RECORDS ACCESS

"Sec.
"2701. Unlawful access to stored communications
"2702. Disclosure of contents.
"2703. Requirements for governmental access
"2704. Backup preservation.
"2705. Delayed notice.
"2706. Cost reimbursement.
"2707. Civil action.
"2708. Exclusivity of remedies.
"2709. Counterintelligence access to telephone toll and transactional records.
"2710. Definitions.

"§ 2701. Unlawful access to stored communications

"(a) OFFENSE.—Except as provided in subsection (c) of this section whoever—

"(1) intentionally accesses without authorization a facility through which an electronic communication service is provided; or

"(2) intentionally exceeds an authorization to access that facility;

and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is electronic storage in such system shall be punished as provided in subsection (b) of this section.

"(b) PUNISHMENT.—The punishment for an offense under subsection (a) of this section is—

"(1) if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain—

"(A) a fine of not more than $250,000 or imprisonment for not more than one year, or both, in the case of a first offense under this subparagraph; and

"(B) a fine under this title or imprisonment for not more than two years, or both, for any subsequent offense under this subparagraph; and

"(2) a fine of not more than $5,000 or imprisonment for not more than six months, or both, in any other case.

"(c) EXCEPTIONS.—Subsection (a) of this section does not apply with respect to conduct authorized—

"(1) by the person or entity providing a wire or electronic communications service;

"(2) by a user of that service with respect to a communication of or intended for that user; or

"(3) in section 2703 or 2704 of this title.

"§ 2702. Disclosure of contents

"(a) PROHIBITIONS.—Except as provided in subsection (b)—

"(1) a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and

"(2) a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission for (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(b) EXCEPTIONS.—A person or entity may divulge the contents of a communication—

"(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;

"(2) as otherwise authorized in section 2516, 2511(2)(a), or 2703 of this title;

"(3) with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;

"(4) to a person employed or authorized or whose facilities are used to forward such communications to its destination;

"(5) as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or

"(6) to a law enforcement agency, if such contents—

"(A) were inadvertently obtained by the service provider; and

"(B) appear to pertain to the commission of a crime.

"§ 2703. Requirements for governmental access

"(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN ELECTRONIC STORAGE.—A governmental entity may require the disclosure by a provider of electronic communication service of the contents of a non-voice wire communication or an electronic communication, that is in electronic storage in an electronic communications system for 180 days or less, only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant. A governmental entity may require the disclosure by a provider of electronic communications services of the contents of an electronic communication that has been in electronic storage in an electronic communications system for more than 180 days by the means available under subsection (b) of this section.

"(b) CONTENTS OF ELECTRONIC COMMUNICATIONS IN A REMOTE COMPUTING SERVICE.—(1) A governmental entity may require a provider of remote computing service to disclose the contents of any electronic communication to which this paragraph is made applicable by paragraph (2) of this subsection—

"(A) without required notice to the subscriber or customer, if the governmental entity obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant;

"(B) with prior notice from the governmental entity to the subscriber or customer if the governmental entity—

"(i) uses an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena; or

"(ii) obtains a court order for such disclosure under subsection (d) of this section;

except that delayed notice may be given pursuant to section 2705 of this title.

"(2) Paragraph (1) is applicable with respect to any electronic communications that is held or maintained on that service—

"(A) on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such remote computing service; and

"(B) solely for the purpose of providing storage or computer processing services to such subscriberr or customer, if the provider is not authorized to access the contents of any such communications for purposes of providing any services other than storage or computer processing.

"(c) RECORDS CONCERNING ELECTRONIC COMMUNICATIONS SERVICE OR REMOTE COMPUTING SERVICE.—A governmental entity may require a provider of electronic communications service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a) or (b) of this section) without required notice to the subscriber or customer if the governmental entity—

"(1) uses an administrative subpoena authorized by a Federal or State statute, or a Federal or State grand jury subpoena;

"(2) obtains a warrant issued under the Federal Rules of Criminal Procedure or equivalent State warrant; or

"(3) obtains a court order for such disclosure under subsection (d) of this section.

"(d) REQUIREMENTS FOR COURT ORDER.—A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity shows that there is reason to believe the contents of a wire or electronic communication, or the records or other information sought, are relevant to a legitimate law enforcement inquiry. In the case of a State governmental authority, such a court order shall not issue if prohibited by the law of such State.

"§ 2704. Backup preservation

"(a) BACKUP PRESERVATION.—(1) A governmental entity acting under section 2703(b)(2) may include in its subpoena or court order a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of such subpoena or court order, such service provider shall create such backup copy as soon as practicable consistent with its regular business practices and shall confirm to the governmental entity that such backup copy has been made. Such backup copy shall be created within two business days after receipt by the service provider of the subpoena or court order.

"(2) Notice to the subscriber or customer shall be made by the governmental entity within three days after receipt of such confirmation, unless such notice is delayed pursuant to section 2705(a).

"(3) The service provider shall not destroy such backup copy until the later of—

"(A) the delivery of the information; or

"(B) the resolution of any proceedings (including appeals of any proceeding) concerning the government's subpoena or court order.

"(4) The service provider shall release such backup copy to the requesting governmental entity no sooner than 14 days after the governmental entity's notice to the subscriber or customer if such service provider—

"(A) has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and

"(B) has not initiated proceedings to challenge the request of the governmental entity.

"(5) A governmental entity may seek to require the creation of a backup copy under subsection (a)(1) of this section if in its sole discretion such entity determines that there is reason to believe that notification under section 2703 of this title of the existence of the subpoena or court order may result in destruction of or tampering with evidence. This determination is not subject to challenge by the subscriber or customer or service provider.

"(b) CUSTOMER CHALLENGES.—(1) Within 14 days after notice by the governmental entity to the subscriber or customer under subsection (a)(2) of this section, such subscriber or customer may file a motion to quash such subpoena or vacate such court order, with copies served upon the governmental entity and with written notice of such challenge to the service provider. A motion to vacate a court order shall be filed in the court which issued such order. A motion to quash a subpoena shall be filed in the appropriate United States district court or State court. Such motion or application shall contain an affidavit or sworn statement—

"(A) stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications maintained for him have been sought; and

"(B) stating the applicant's reasons for believing that the records sought are not relevant to a legitimate law enforcement inquiry or that there has not been substantial compliance with the provisions of this chapter in some other respect.

"(2) Service shall be made under this section upon governmental entity by delivering or mailing by registered or certified mail a copy of the papers to the person, office, or department specified in the notice which the customer has received pursuant to this chapter. For the purposes of this section, the term 'delivery' has the meaning given that term in the Federal Rules of Civil Procedure.

"(3) If the court finds that the customer has complied with paragraphs (1) and (2) of this subsection, the court shall order the governmental entity to file a sworn response, which may be filed in camera if the governmental entity includes in its response the reasons which make in camera review appropriate. If the court is unable to determine the motion or application on the basis of the parties' initial allegations and response, the court may conduct such additional proceedings as it deems appropriate. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the governmental entity's response.

"(4) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the governmental entity are maintained, or that there is a reason to believe that the law enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, it shall deny the motion or application and order such process enforced. If the court finds that the applicant is the subscriber or customer for whom the communications sought by the governmental entity are maintained, and that there is not a reason to believe that the communications sought are relevant to a legitimate law enforcement inquiry, or that there has not been substantial compliance with the provisions of this chapter, it shall order the process quashed.

"(5) A court order denying a motion or application under this section shall not be deemed a final order and no interlocutory appeal may be taken therefrom by the customer.

"§ 2705. Delayed notice

"(a) DELAY OF NOTIFICATION.—(1) A governmental entity acting under section 2703(b) of this title may—

"(A) where a court order is sought, include in the application a request, which the court shall grant, for an order delaying the notification required under section 2703(b) of this title for a period not to exceed 90 days; if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result described in paragraph (2) of this subsection; or

"(B) where an administrative subpoena authorized by a Federal or State statute or a Federal or State grand jury subpoena is obtained, delay the notification required under section 2703(b) of this title for a period not to exceed 90 days upon the execution of a written certification of a supervisory official that there is reason to believe that notification of the existence of the sub-

poena may have an adverse result described in paragraph (2) of this subsection.

"(2) An adverse result for the purposes of paragraph (1) of this subsection is—

"(A) endangering the life or physical safety of an individual;

"(B) flight from prosecution;

"(C) destruction of or tampering with evidence;

"(D) intimidation of potential witnesses; or

"(E) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"(3) The governmental entity shall maintain a true copy of certification under paragraph (1)(B).

"(4) Extensions of the delay of notification provided in section 2703 of up to 90 days each may be granted by the court upon application, or by certification by a governmental entity, but only in accordance with subsection (b) or (c) of this section.

"(5) Upon expiration of the period of delay of notification under paragraph (1) or (4) of this subsection, the governmental entity shall serve upon, or deliver by registered or first class mail to, the customer or subscriber a copy of the process or request together with notice that—

"(A) states with reasonable specificity the nature of the law enforcement inquiry; and

"(B) informs such customer or subscriber—

"(i) that information maintained for such customer or subscriber by the service provider named in such process or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;

"(ii) that notification of such customer or subscriber was delayed;

"(iii) what governmental entity or court made the certification or determination pursuant to which that delay was made; and

"(iv) which provision of this chapter allowed such delay.

"(6) As used in this subsection, the term 'supervisory official' means the investigative agent in charge or assistant investigative agent in charge or an equivalent of an investigating agency's headquarters or regional office, or the chief prosecuting attorney or the first assistant prosecuting attorney or an equivalent of a prosecuting attorney's headquarters or regional office.

"(b) PRECLUSION OF NOTICE TO SUBJECT OF GOVERNMENTAL ACCESS.—A governmental entity acting under section 2703, when it is not required to notify the subscriber or customer under section 2703(b)(1), or to the extent that it may delay such notice pursuant to subsection (a) of this section, may apply to a court for an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order. The court shall enter such an order if it determines that there is reason to believe that notification of the existence of the warrant, subpoena, or court order will result in—

"(1) endangering the life or physical safety of an individual;

"(2) flight from prosecution;

"(3) destruction of or tampering with evidence;

"(4) intimidation of potential witnesses; or

"(5) otherwise seriously jeopardizing an investigation or unduly delaying a trial.

"§ 2706. Cost reimbursement

"(a) PAYMENT.—Except as otherwise provided in subsection (c), a governmental entity obtaining the contents of communications, records, or other information under section 2702, 2703, or 2704 of this title shall pay to the person or entity assembling or providing such information a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching for, assembling, reproducing, or otherwise providing such information. Such reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service in which such information may be stored.

"(b) AMOUNT.—The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information, or, in the absence of agreement, shall be as determined by the court which issued the order for production of such information (or the court before which a criminal prosecution relating to such information would be brought, if no court order was issued for production of the information).

"(c) The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under section 2703 of this title. The court may, however, order a payment as described in subsection (a) if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

"§ 2707. Civil action

"(a) CAUSE OF ACTION.—Any provider of electronic communication service, subscriber, or customer aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity which engaged in that violation such relief as may be appropriate.

"(b) RELIEF.—In a civil action under this section, appropriate relief includes—

"(1) such preliminary and other equitable or declaratory relief as may be appropriate;

"(2) damages under subsection (c); and

"(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

"(c) DAMAGES.—The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000.

"(d) DEFENSE.—A good faith reliance on—

"(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization;

"(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

"(3) a good faith determination that section 2511(3) of this title permitted the conduct complained of;

is a complete defense to any civil or criminal action brought under this chapter or any other law.

"(e) LIMITATION.—A civil action under this section may not be commenced later than two years after the date upon which the claimant first discoverd or had a reasonable opportunity to discover the violation.

"§ 2708. Exclusivity of remedies

"The remedies and sanctions described in this chapter are the only judicial remedies and sanctions for nonconstitutional violations of this chapter.

"§ 2709. Counterintelligence access to telephone toll and transactional records

"(a) DUTY TO PROVIDE.—A Communications common carrier or an electronic communication service provider shall comply with a request made for telephone subscriber information and toll billing records information, or electronic communication transactional records made by the Director of the Federal Bureau of Investigation under subsection (b) of this section.

"(b) REQUIRED CERTIFICATION.—The Director of the Federal Bureau of Investigation (or an individual within the Federal Bureau of Investigation designated for this purpose by the Director) may request any such information and records if the Director (or the Director's designee) certifies in writing to the carrier or provider to which the request is made that—

"(1) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(2) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power or an agent of a foreign power as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

"(c) PROHIBITION OF CERTAIN DISCLOSURE.—No communications common carrier or service provider, or officer, employee, or agent thereof, shall disclose to any person that the Federal Bureau of Investigation has sought or obtained access to information or records under this section.

"(d) DISSEMINATION BY BUREAU.—The Federal Bureau of Investigation may disseminate information and records obtained under this section only as provided in guidelines approved by the Attorney General for foreign intelligence collection and foreign counterintelligence investigations conducted by the Federal Bureau of Investigation, and, with respect to dissemination to an agency of the United States, only if such information is clearly relevant to the authorized responsibilities of such agency.

"(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL BODIES BE INFORMED.—On a semiannual basis the Director of the Federal Bureau of Investigation shall fully inform the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate concerning all requests made under subsection (b) of this section.

"§ 2710. Definitions for chapter

"As used in this chapter—

"(1) the terms defined in section 2510 of this title have, respectively, the definitions given such terms in that section; and

"(2) the term 'remote computing service' means the provision to the public of computer storage or processing services by means of an electronic communications system.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by adding at the end the following:

"121. Stored Wire and Electronic Communications and Transactional Records Access . . . . . 2701".

SEC. 202. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

TITLE III—PEN REGISTERS

SEC. 301. TITLE 18 AMENDMENT.

(a) IN GENERAL.—Title 18 of the United States Code is amended by inserting after chapter 205 the following new chapter:

"CHAPTER 206—PEN REGISTERS

"§ 3121. General prohibition on pen register use; exception

"(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveilliance Act of 1978 (50 U.S.C. 1801 et seq.).

"(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register by a provider of electronic or wire communication service—

"(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

"(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service, or with the consent or the user of that service.

"(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

"§ 3122. Application for a order for a pen register

"(a) APPLICATION.—(1) An attorney for the Government may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register under this chapter, in writing under oath or equivalent affirmation, to a court of competent jurisdiction.

"(2) Unless prohibited by State law, a State investigative or law enforcement officer may make application for an order or an extension of an order under section 3123 of this title authorizing or approving the installation and use of a pen register under this chapter, in writing under oath or equivalent affirmantion, to a court of competent jurisdiction of such State.

"(b) CONTENTS OF APPLICATION.—An application under subsection (a) of this section shall include—

"(1) the identity of the attorney for the Government or the State law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and

"(2) a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

"§ 3123. Issuance of an order for a pen register

"(a) IN GENERAL.—Upon an application made under section 3122 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register within the jurisdiction of the court if the court finds that the attorney for the government or the State law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to an ongoing criminal investigation.

"(b) CONTENTS OF ORDER.—An order issued under this section—

"(1) shall specify—

"(A) the identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register is to be attached;

"(B) the identity, if known, of the person who is the subject of the criminal investigation;

"(C) the number and, if known, physical location of the telephone line to which the pen register is to be attached; and

"(D) a statement of the offense to which the information likely to be obtained by the pen register relates; and

"(2) shall direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register under section 3124 of this title.

"(c) TIME PERIOD AND EXTENSIONS.—(1) An order issued under this section shall authorize the installation and use of a pen register for a period not to exceed 60 days.

"(2) Extensions of such an order may be granted, but only upon an application for an order under section 3122 of this title and upon the judicial finding required by subsection (a) of this section. The period of extension shall be for a period not to exceed 60 days.

"(d) NONDISCLOSURE OF EXISTENCE OF PEN REGISTER.—An order authorizing or approving the installation and use of a pen register shall direct that—

"(1) the order be sealed until otherwise ordered by the court; and

"(2) the person owning or leasing the line to which the pen register is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or the existence of the investigation to the listed subscriber, or to any other person, unless othewise ordered by the court.

"§ 3124. Assistance in installation and use of pen register

"(a) IN GENERAL.—Upon the request of an attorney for the government or an officer of a law enforcement agency authorized to install and use a pen register under this chapter, a provider of wire communication service, landlord, custodian, or other person shall furnish such investigative or law enforcement officer forthwith all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in section 3123(b)(2) of this title.

"(b) COMPENSATION.—A provider of wire communication service, landlord, custodian, or other person who furnishes facilities or technical assistance pursuant to this section shall be reasonably compensated for such reasonable expenses incurred in providing such facilities and assistance.

"§ 3125. Reports concerning pen registers

"The Attorney General shall annually report to Congress on the number of pen register orders applied for by law enforcement agencies of the Department of Justice.

"§ 3126. Definitions for chapter

"As used in this chapter—

"(1) the term 'communications common carrier' has the meaning set forth for the term 'common carrier' in section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h));

"(2) the term 'wire communication' has the meaning set forth for such term in section 2510 of this title;

"(3) the term 'court of competent jurisdiction' means—

"(A) a district court of the United States (including a magistrate of such a court) or a United States Court of Appeals; or

"(B) a court of general criminal jurisdiction of a State authorized by the law of that State to enter orders authorizing the use of a pen register;

"(4) the term 'pen register' means a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted, with respect to wire communications, on the telephone line to which such device is attached, but such term does not include any device used by a provider of wire communication service for billing, or recording as an incident to billing, for communications services provided by such provider; and

"(5) the term 'attorney for the Government' has the meaning given such term for the purposes of the Federal Rules of Criminal Procedure; and

"(6) the term 'State' means a State, the District of Columbia, Puerto Rico, and any other possession or territory of the United States.".

(b) CLERICAL AMENDMENT.—The table of chapters for part II of title 18 of the United States Code is amended by inserting after the item relating to chapter 205 the following new item:

"206. Pen Registers ..... 3121".

SEC. 302. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect 90 days after the date of the enactment of this Act and shall, in the case of conduct pursuant to a court order or extension, apply only with respect to court orders or extensions made after this title takes effect.

(b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF INTERCEPTIONS.—Any pen register order or installation which would be valid and lawful without regard to the amendments made by this title shall be valid and lawful notwithstanding such amendments if such order or installation occurs during the period beginning on the date such amendments take effect and ending on the earlier of—

(1) the day before the date of the taking effect of changes in State law required in order to make orders or installations under Federal law as amended by this title; or

(2) the date two years after the date of the enactment of this Act.

A SUMMARY OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT

The Electronic Communications Privacy Act amends Title III of the Omnibus Crime Control and Safe Streets Act of 1968—the federal wiretap law—to protect against the unauthorized interception of electronic communications. The bill amends the 1968 law to update and clarify federal privacy protections and standards in light of dramatic changes in new computer and telecommunications technologies. Originally introduced in the Senate as S. 1667 by Senators Leahy and Mathias, and H.R. 3378 by Congressman Kastenmeier and Moorhead, the bill has gone through a substantial revision as a result of negotiations with affected industry groups and the Department of Justice. On June 11, the House Judiciary Committee unanimously reported the product of these negotiations which has been reintroduced as H.R. 4952. The Justice Department strongly supports this legislation. Highlights of the bill follow:

Currently, Title III covers only voice communications. The bill expands coverage to include video and data communications.

Currently, Title III covers only common carrier communications. The bill eliminates that restriction since private carriers and common carriers perform so many of the same functions today that the distinction no longer serves to justify a different privacy standard.

At the request of the Justice Department, the bill continues to distinguish between electronic communications (data and video) and wire or oral communications (voice) for purposes of some of the procedural restrictions currently contained in Title III. For example, court authorization for the interception of a wire or oral communication may only be issued to investigate certain crimes specified in Title III. An interception of an electronic communication pursuant to court order may be utilized during the investigation of any federal felony.

Certain electronic communications are exempted from the coverage of the bill including the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit; tone only paging devices; amateur radio operators and general mobile radio services; marine and aeronautical communications systems; police, fire, civil defense and other public safety radio communications systems; the satellite transmission of network feeds; the satellite transmission of satellite cable programming as defined in Section 705 of the Communications Act of 1934; any other radio communication which is made through an electronic communications system that is configured so that such communication is "readily accessible to the general public," a defined term in the bill.

The term readily accessible to the general public does not include communications made by cellular radio telephone systems; therefore, the bill continues current restrictions contained in Title III against the interception of telephone calls made on cellular telephone systems. However, the criminal penalty for an unlawful interception of a cellular phone call is reduced from the current five-year felony to a six-month petty offense.

The bill expends the list of felonies for which a voice wiretap order may be issued. It also expands the list of Justice Department officials who may apply for a court order to place a wiretap.

The bill creates a limited exception to the requirement that a wiretap order designate a specific telephone to be intercepted where the Justice Department makes a showing that the target of the wiretap is changing telephones to thwart interception of his or her communications.

The bill makes it a crime for a person who has knowledge of a court authorized wiretap to notify any person of the possible interception in order to obstruct, impede or prevent such interception.

Title II of the bill creates parallel privacy protection for the unauthorized access to the computers of an electronic communications system, if information is obtained or altered. It does little good to prohibit the unauthorized interception of information while it is being transmitted, if similar protection is not afforded to the information while it is being stored for later forwarding.

The bill establishes criminal penalties for any person who willfully accesses without authorization a computer through which an electronic communication service is provided and obtains, alters or prevents authorized access to a stored electronic communication. The offense is punished as a felony if committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain; otherwise it is punished as a petty offense.

Providers of electronic communication services to the public and providers of remote computing services to the public are prohibited from willfully divulging the contents of communications contained in their systems except under circumstances specified in the bill.

The contents of messages contained in electronic storage of electronic communications systems which have been in storage for 180 days or less may be obtained by a government entity from the provider of the system only pursuant to a warrant issued under the Federal Rules of Criminal Procedure or equivalent state warrant.

The content of messages stored more than 180 days and the contents of certain records stored by providers of remote computer processing services may be obtained from the provider of the service without notice to the subscriber if the government obtains a warrant under the Federal Rules of Criminal Procedure or with notice to the customer pursuant to an administrative subpoena, a grand jury subpoena, or a court order based on a showing that there is reason to believe that the contents of the communication are relevant to a legitimate law enforcement inquiry. Provisions for delay in notice are also included.

Civil penalties are created for users of electronic communications services whose rights under the bill are violated.

The bill creates a statutory framework for the authorization and issuance of an order for a pen register based on a finding that such installation and use is relevant to an on going criminal investigation.

Mr. MATHIAS. Mr. President, today I am pleased to join with the junior Senator from Vermont, [Mr. LEAHY], to introduce the Electronic Communications Privacy Act of 1986. This legislation is an essential element in our efforts to strengthen the protection of Americans' right to privacy in an era of ever more pervasive electronic communications media.

The bill we introduce today is a revised version of S. 1667, which Senator LEAHY and I introduced on September 19, 1985. It is also identical to H.R. 4952, as unanimously approved earlier this month by the Judiciary Committee of the House of Representatives.

This bill has the same goal as S. 1667: To protect the privacy of Americans against unwanted and unwarranted intrusions. It adopts the same means to that goal: An updating of the 1968 Federal wiretap statute to bring fully within its ambit new communications technologies—including electronic mail, cellular telephone, and data transmissions between computers—that have transformed the ways in which Americans share information with each other and with the world. But our earlier bill has been improved by the process of hearings in both the Senate and the House, and extensive negotiations among interested parties in Government, private industry, and civil libertarians. The result is a bill that should enhance privacy protection, promote the development and proliferation of new communications technologies, and respond to the legitimate needs of law enforcement.

Technological advances are fast obliterating the distinctions among voice, video, and data transmission. Deregulation has made less meaningful the distinction between common carrier and private communications systems. And new means of sending and storing information are blurring the line between data in transmission and information in temporary electronic storage. This legislation responds to these developments by protecting the privacy of information in any electronic form, while it is in transmission or temporary storage, and without regard to the medium of its transmission. While the bill retains a few distinctions between the treatment of conventional telephone conversations and transmissions by other media, these differences appear reasonable and do not seriously detract from the principle of adapting the law to the technology of the present and future, rather than the past.

The Electronic Communications Privacy Act of 1986 specifies the circumstances under which law enforcement agencies may seek to intercept eletronic communications or intrude into incidental electronic communications storage facilities. It also outlaws those intrusions unless undertaken pursuant to a warrant, and prohibits computer hacking directed against electronic communications systems if the result is to obtain, alter, or prevent access to a communication stored in the computer. The bill provides standards for third-party access to other data held by the operators of electronic communications services, and gives the customer of the service a civil remedy if these standards are not followed. Finally, this bill makes necessary improvements in the existing wiretap law to enhance the availability, usefulness

and accountability of this key law enforcement tool. A more detailed discussion of the provisions of the Electronic Communications Privacy Act may be found in the summary that Senator LEAHY and I have inserted today in the CONGRESSIONAL RECORD.

Mr. President, the principles underlying this bill have long been supported by privacy advocates and by the affected communications industries, which know that business growth and continued innovation depend upon customer confidence that unauthorized snooping will be deterred and punished. That support continues, and has been strengthened by the improvements made in the bill in the legislative process in the other body. The administration in general, and the Attorney General in particular, have also been on record for a long time in support of the need to bring the wiretap laws up to date with modern technology. Attorney General Meese, when he appeared before the Judiciary Committee on January 29, 1985, seeking confirmation for the post he now holds, told the committee that one of his highest priorities as the chief law enforcement officer of the land would be "the safeguarding of individual privacy from improper governmental intrusion." During the same proceeding, he specifically noted electronic surveillance law as an area where new technology demanded updating. Given the Attorney General's strong views on privacy protection, I am particularly pleased to report to the Senate that the bill we introduce today has the vigorous and active support of the Department of Justice, not just as a general concept, but as a fully articulated legislative package. While negotiations with the Justice Department about this bill have been lengthy; they have resulted in a bill that the Department embraces as a vehicle for carrying out the Attorney General's commitment to protect the privacy of Americans.

Mr. President, the bill we introduce today adds to S. 1667 the useful improvements crafted by our colleagues in the House of Representatives, particularly Representative ROBERT KASTENMEIER, chairman of the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, and Representative CARLOS MOORHEAD, that subcommittee's ranking minority member. I urge Senators to examine this legislation, to suggest any further refinements that may be necessary, and to join with me and with Senator LEAHY to see that it is speedily enacted into law.

By Mr. DURENBERGER (for himself, Mr. BAUCUS, Mr. DOLE, Mr. CHAFEE, Mr. HEINZ, Mr. CHILES, Mr. ANDREWS, Mr. ABDNOR, Mr. MITCHELL and Mr. BENTSEN):

S. 2576. A bill to amend title XVIII of the Social Security Act to require timely payment of properly submitted Medicare claims; to the Committee on Finance.

MEDICARE TIMELY PAYMENT AMENDMENTS

Mr. DURENBERGER. Mr. President, I rise today to introduce the "Medicare Timely Payment Amendments of 1986." This bill amends title XVIII of the Social Security Act to require Medicare to pay hospitals, doctors, and other health care providers promptly for services rendered to program beneficiaries as well as reimburse beneficiaries quickly when they file claims personally. My colleagues Senators BAUCUS, DOLE, BENTSEN, CHAFEE, HEINZ, CHILES, ANDREWS, ABDNOR, and MITCHELL are joining me in sponsoring this measure. S. 2576 is a companion to a bill of the same title being introduced today in the House of Representatives by Congressmen GRADISON and STARK and several of their colleagues in the Ways and Means Committee of the House.

Mr. President, S. 2576 deals with a problem faced by Medicare beneficiaries—and a lot of hospitals and physicians—who are being "held up" by the Federal Government.

It deals with a 93-year-old woman in Windom, MN, and an 81-year-old woman in Mountain Lake, MN, and a hospital in Crookston, MN—all of whom, right now, are being held up by the Federal Government.

Here's how the Government's scam works.

On December 24 of last year, a 93-year-old woman from Windom, MN, was admitted to her local hospital for draining of a breast cyst and a related biopsy. She was in the hospital until January 9 of this year when she was released. The charges by this woman's physician amounted to $900 which she submitted to Medicare in early February. In good faith, she paid the doctor the $900, assuming that she would be promptly paid by Medicare. As of today, more than 4 months after her bill was submitted, she still hasn't been paid.

Or, consider the case of an 81-year-old woman from Mountain Lake, MN, who is still waiting for the $300 she is owed by Medicare for minor surgery she had done—and paid for out of her own pocket—last October 15.

Or, consider the effect of what are now routine payment delays by Medicare on the cash flows of already hard pressed rural hospitals which depend on Medicare for a majority of their patient income.

Take the case of Riverview Hospital in Crookston, MN, as just one example.

As recently as October of last year, the percentage of Medicare accounts receivable at Riverview, which were still unpaid 30 days after being submitted for payment, were 52.6 percent.

By April of this year, that percentage had jumped to 75.2 percent. More than three-fourths of Medicare receivables, in other words, are more than 30 days past due.

For the Crookston, MN, hospital, Medicare's record on very long payment delays is even worse—and getting worse all the time.

Last October, the percentage of Medicare receivables which were more than 90 days past due was 29.8 percent. But, by April of this year, that percentage had grown to 48.6 percent.

Almost half of Medicare's accounts with this hospital, in other words, were more than 90 days past due.

Unfortunately, these examples are not the exception—they're the rule.

Medicare's reimbursement for hospital services, part A, has gone from a national average payment within 9.3 days in 1983, to 19.1 days this April.

Actual payment to doctors and beneficiaries filing their own claims (part B) has gone from an average of 12.9 days in 1983 to 25.9 days in April of 1986.

And, those averages do not include the estimated 2.5 days that claims take to get to the Medicare insurance carrier and the 2.5 days the check takes to get from the payer back to the hospitals, doctors and beneficiaries.

And, things are only getting worse.

It is my understanding that the Health Care Financing Administration wants to go from the current average turnaround of 19.1 days for hospitals and 25.9 days for physicians up to a standard of 27 days for both parts A and B claims in the near future.

This policy of delaying payments to Medicare providers and beneficiaries—where intermediaries and carriers are simply piling up bills they have been ordered not to pay—is patently unfair.

It means that older Americans—and their doctors and hospitals—are having to wait months and months for payments—simply because some "budget rowdy" in the Office of Management and Budget has figured out that the Federal Government makes money from the interest on unspent funds in the trust fund when Medicare doesn't pay its bills.

This is spent money, owed for services rendered. It is illegal for you or me to "float" money by issuing a check that is not covered by an adequate bank balance. It bounces—it gets sent back with an ugly note. If you do it intentionally, or over and over again, you go to jail.

But, Medicare does this same sort of thing every day—as a matter of policy.

It is time that this official Government policy of holding people up is brought to a halt.

Today, I am joined by several of my colleagues in the Senate, and Congressmen BILL GRADISON and PETE STARK in introducing S. 2576 which we

believe will do just that—bring to a halt an official Government policy that would get you or me thrown in jail.

This bill, would require the Health Care Financing Administration to have its intermediaries and carriers make good on its bills within 22 days, or the Government will have to pay interest on what it owes.

This legislation will lead to fairer treatment to the patients and providers who do business with Medicare in good faith and expect to receive the same treatment in return.

It is the only fair thing to do.

But, this measure is equally important for another reason.

We are going through a period of dynamic and rapid change in the health care system—change which is driven in large measure by Medicare payment reform.

Hospitals are now paid for services on a schedule of set fees for each diagnosis—the so-called prospective payment system.

Eventually, other health care providers—doctors, skilled nursing facilities, and home health care agencies—will be brought under this type of payment system.

We may not pay them all on a per-case basis—they may be paid through vouchers given to beneficiaries—but, the point is that these changes are encouraging all health care providers to act in a more efficient, businesslike manner.

This process of reform will not work without the cooperation of the providers and beneficiaries who are having their lives altered by some very necessary change.

DRG's, in particular, could not have been put in place without the active cooperation of hospitals. And, the next steps in reform will require a similar spirit of cooperation.

But, if doctors and other health care providers aren't even paid in a timely, businesslike fashion, how can we request them to do likewise?

Mr. President, I should add in conclusion that S. 2576 is identical to its House companion with the exception that it does not include a House bill provision which preserves periodic interim payment [PIP] for hospitals.

Under PIP eligible hospitals receive a biweekly payment based on its estimated annual cost of Medicare utilization in lieu of payment per billed claim. PIP has been available to qualifying hospitals since 1968 but would be dropped by regulations proposed on June 3 by the Secretary of Health and Human Services.

My Senate colleagues and I chose to remain silent on PIP in S. 2576. However, I am sure it will be a pivotal issue for us when the Senate Finance Committee deliberates on Medicare prompt payment in the budget reconciliation markup.

S. 2576 will make sure that the Medicare system holds up its end of the bargain, in what can, and must be, a cooperative effort to reshape the health care system in America.

Mr. President, I ask that the text of the bill, a bill summary, and a chart illustrating the change over time in the average number of days it takes Medicare to pay to beneficiaries, hospitals and doctors, be printed in consecutive order in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2576

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Medicare Timely Payment Amendments of 1986".

SEC. 2. PROMPT PAYMENT BY INTERMEDIARIES UNDER PART A.

Section 1816(c) of the Social Security Act (42 U.S.C. 1395h(c)) is amended—

(1) by inserting "(1)" after "(c)", and

(2) by adding at the end the following new paragraph: "(2)(A) Each agreement under this section shall provide that, in cases of claims for which payment is not made on a periodic interim payment basis under section 1815(a)—

"(i) if payment is not issued and mailed (or otherwise transmitted) within 22 calendar days after the date on which a clean claim is received, interest or the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

"(ii) within 22 days after the date a claim for payment under this part is received, the agency or organization shall notify the entity submitting the claim of any defect or impropriety in the claim (including the lack of any required substantiating documentation) or circumstance requiring special treatment that prevents the claim from being treated as a clean claim and prevents timely payment from being made;

"(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be paid (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is issued and mailed (or otherwise transmitted) or the date the notice is provided, whichever date is earlier; and

"(iv) the agency or organization will be reimbursed under the agreement for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs of the Secretary in carrying out this part.

"(B) In this paragraph, the term 'clean claim' means a claim which meets the requirements of section 1814(a)(1) and any other requirements of this title for payment under the part.".

SEC. 3. PROMPT PAYMENT BY CARRIERS UNDER PART B.

Section 1842(c) of the Social Security Act (42 U.S.C. 1395u(c) is amended—

(1) by insert "(1)" after "(c)", and

(2) by adding at the end the following new paragraph:

"(2)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B), shall provide, in the case of claims for which payment is not made on a periodic interim payment basis described in section 1815(a)—

"(i) if payment is issued and mailed (or otherwise transmitted) within 22 calendar days after the date on which a clean claim is received, interest on the claim shall be paid at the rate used for purposes of section 3902(a) of title 31, United States Code (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made;

"(ii) within 22 days after the date a claim for payment under this part is received, the carrier shall notify the entity submitting the claim of any defect or inpropriety in the claim (including the lack of any required substantiating documentation) or circumstance requiring special treatment that prevents the claim from being treated as a clear claim and prevents timely payment from being made;

"(iii) if notice required under clause (ii) is not provided on a timely basis with respect to a claim and payment is subsequently made on the claim, interest on the amount determined to be payable shall be paid (at the rate described in clause (i)) for the period beginning on the day after the required notice date and ending on the date on which payment is issued and mailed (or otherwise transmitted) or the date the notice is provided, whichever date is earlier; and

"(iv) the carrier will be reimbursed under the contract for the amount of interest paid under this subparagraph from amounts made available for Federal administrative costs of the Secretary in carrying out this part.

"(B) In this paragraph, the term 'clean claim' means a claim which meets the requirements of this title for payment under this part.".

SEC. 4. EFFECTIVE DATE.

(a) PROMPT PAYMENT.—The amendments made by sections 2 and 3 shall apply to claims received on or after September 1, 1986.

(b) REVISION OF INTERMEDIARY AGREEMENTS, CARRIER CONTRACTS, AND REGULATIONS.—The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act and contracts under section 1842 of such Act, and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis.

THE "MEDICARE TIMELY PAYMENT AMENDMENTS OF 1986"

BACKGROUND

The Department of Health and Human Services has pursued budget savings by instructing Medicare carriers and intermediaries to slow down their claims processing. Just thirty-six months ago, it took an average of 9.3 days to process Part A hospital bills and 12.6 days to process a Part B claim for physician's services. Currently, the average turn-around time for Medicare claims is 19.1 days for hospitals' claims and 25.9 days for doctors' claims. And now the Department has told the carriers and intermediaries that the standard should be almost one

month to process a claim for services rendered to a Medicare beneficiary.

THE "MEDICARE TIMELY PAYMENT AMENDMENTS OF 1986"

What does this bill do? This bill simply requires that claims be issued and mailed within 22 calendar days, or else interest will be paid by the government in addition to the payment for the service.

Specifically, the bill requires—for both Part A fiscal intermediaries and Part B carriers—that:

(1) each carrier and intermediary shall issue and send out to providers and beneficiaries the payments that are owed by Medicare within 22 calendar days after it receives a proper claim, or else it must also pay the provider interest for the number of processing days by which it exceeded the deadline—the same interest that the Prompt Payment Act requires the government in other cases of late payment;

(2) if a provider or beneficiary submits a claim with inadequate information (in other words, something that is not a "clean claim"), the carrier or intermediary must notify the provider of the defect in the claim within 22 calendar days or else the carrier will be required to pay interest on the number of days by which the final payment or notice to the provider exceeded the 22-day deadline;

(3) the interest will be paid from the administrative funds of the Department.

The House companion to this bill differs only in that it addresses periodic interim payments to hospitals (PIP) while the Senate bill is silent on the issue.

MEDICARE AVERAGE CLAIMS PROCESSING DAYS FOR HOSPITAL CARE (PART A) AND FOR PHYSICIAN SERVICES (PART B)

	Hospital payment (part A)	Physician payment (part B)
September 1983	9.3	12.6
September 1984	10	14.5
September 1985	15.6	20
February 1986	16.7	20.3
March 1986	19.1	25.9
Health Care Financing Administration proposed standard	27	27

Mr. DOLE. Mr. President, I am pleased to join with Senator DURENBERGER and the bipartisan group of my distinguished colleagues to introduce this bill today. The Medicare timely payment amendment is intended to correct a very real problem. The goal of this proposed legislation is simple and fair—prompt payment for services rendered. All this bill does is to require that the Medicare Program restore its policy of paying bills in a timely fashion, so that hospitals, physicians, skilled nursing facilities, suppliers, and other health care providers are paid in a reasonable time period. And beneficiaries may also expect prompt payment for bills they paid as well. That's the simple part. The Medicare Program contractors, those companies that actually process and pay the bills, will not be ordered by this Government to intentionally slow down payments without the Government sharing in the cost of payment delays. And that's the fair part.

We do have a deficit that needs to be faced straight on. And this is one Senator who knows we have to make some hard choices. But we cannot allow those who provide health care services or those Medicare beneficiaries who dug into their pockets to pay their medical bills on time to bare the brunt of poor policy—we cannot support a policy of slow downs in payment intended only for short-term savings.

This bill makes sense and, while we may find opportunities to refine the language, our intention is clear—the Medicare Program will pay its bills on time.

Mr. BAUCUS. Mr. President, today I am pleased to join with my colleague from Minnesota, Senator DURENBERGER, and a bipartisan group of Senators to introduce a bill to require that Medicare bills be paid on time.

The Medicare Timely Payment Act of 1986 sends a strong message to the Department of Health and Human Services [HHS] and to the Office of Management and Budget that Congress wants Medicare bills paid faster.

This legislation requires Medicare to pay its bills within 22 days. And, if HHS continues to pay Medicare bills late, our bill requires that interest be paid on any claims that are paid beyond the 22-day limit.

During the same 22-day period, HHS would be required to direct its claims processing contractors to determine whether there are any flaws or errors in the submitted claim. In other words, we are also establishing a deadline for reviewing claims to ensure that they are error-free. Medicare beneficiaries and health care providers should not be forced to wait and wait only to find out that their claims need to be corrected before Medicare agrees to pay its bills.

This bill reverses the administration's deliberate effort to slow down Medicare payments in order to save money for the Federal Government. Right now, HHS can take as long as it wants to pay its health care bills without regard to the hardships caused by their delays and without paying a price for lateness.

I doubt that there is a single Senator who has not heard from Medicare beneficiaries, doctors, local hospital administrators, and many others who are fed up with late Medicare payments. And I know of no Senator who considers the deliberate payment slowdown to be a legitimate way for the Federal Government to achieve budget savings in the Medicare Program.

A few weeks ago, I joined the distinguished Senator from Florida [Mr. CHILES] and a bipartisan group of over 15 Senators in a Senate resolution calling on HHS to speed up the payment process. That resolution also calls on the Senate to adopt legislation to ensure that health care bills are paid promptly if HHS continues its policy of slowing down Medicare claims.

Today, we are here to offer the Senate a legislative means to speed up Medicare payments if HHS fails to take action on its own.

The administration's payment slowdown has caused Medicare beneficiaries—30 million American seniors—to wait for many weeks, or even months, for Medicare to pay its share of their health care bills. Similarly, hospitals, doctors, and other health care providers are often forced to wait for unreasonable amounts of time for Medicare payments.

The message that this bill sends to HHS is: "pay on time, or pay the price."

It's time for Medicare to face up to the same real world penalties for late payment of bills that apply to the average American. When the average American fails to pay his bills on time, he must pay interest. In other words, there is a price to be paid for untimely payment.

It's time for the Federal Government to stop short-changing the elderly, the doctors, the hospitals, and other health care providers by delaying their Medicare bills and earning interest on the money owed to American citizens.

FURTHER IMPROVEMENTS ARE NEEDED

The Medicare Timely Payment Act establishes a much-needed standard for payment promptness, but this bill, like all legislation, can also be improved.

First, I am deeply concerned about the administration's June 3 regulatory proposal to completely eliminate the Periodic Interim Payment Program (PIP). This program provides certain hospitals with the option of receiving regular, biweekly payments. I have no doubt that the Finance Committee will take a hard look at this proposal before any decision is made on the future of this important payment program.

Stable, predictable cash-flow is particularly important for small rural hospitals, home health agencies and other health care providers that serve disproportionately large numbers of Medicare patients.

Regular Medicare payment can often be a question of survival for these institutions. And rapid changes in Federal payment policy must not be allowed to threaten the very existence of these financially vulnerable health care providers.

When the Finance Committee meets this year to mark-up health legislation, I intend to offer an amendment to ensure that the periodic payment program remains available for small rural hospitals. And I will be working with my colleagues on the committee to identify other circumstances where

the periodic payment option should be continued.

Second, I believe that the Finance Committee needs to examine carefully the source of funding for the interest payments required by this legislation.

Our bill requires that the interest on late payments come from the amounts provided to the Secretary for Federal Medicare management costs. But, I am sure that it is not the intention of the sponsors of this bill to allow these interest obligations to weaken the ability of HHS to properly administer the Medicare program.

I hope that HHS and the Office of Management and Budget will work closely with us to identify an appropriate way to fund the required interest payments without jeopardizing the smooth administration of the Medicare program.

Finally, I recognize that timely claims processing involves many complications that may not be fully addressed in this legislation. For example, some Medicare claims must be reviewed by health care professionals for the medical necessity of the services provided. In other cases, it is necessary to track down private insurers who are responsible for payment before Medicare pays the rest of the bill.

It is certainly not our intention to sacrifice necessary payment safeguards in the effort to speed-up the payment process. In fact, many of these safeguards exist because of previous Congressional directions to HHS to make sure that Medicare is only paying bills for which the Federal Government is responsible.

Again, I believe that, working cooperatively, we can address these issues and balance the need for payment safeguards with the strong intent of the sponsors of this legislation to get Medicare's bills paid on time.

CONCLUSION

Mr. President, it disturbs me that it may take an act of Congress to ensure timely payment of Medicare claims. It should not be necessary. But legislation will be necessary if the Federal Government continues to delay payment of the money owed to its own citizens as a way to cut the budget.

Payment delay undermines the confidence of the American people in the fairness of Government. It creates needless anxiety, frustration and hardship. And it puts the interest of government ahead of the interest of American citizens—those for whom Government exists to serve.

I look forward to working with my colleagues and with the administration to restore confidence in the Medicare Program by ensuring that timely payment becomes a reality.

Mr. CHAFEE. Mr. President, I am pleased to join in the introduction of the Medicare Timely Payment Amendments of 1986. This legislation addresses a particularly disturbing problem that has been going on for over 1 year.

Medicare provides health care services to the majority of elderly individuals in the United States. Many elderly individuals in this country would be virtually without health care services with the Medicare Program.

Yet, we constantly forget that the Medicare Program depends on the good faith participation of health care providers—hospitals, doctors, nurses, nursing homes, and others. We can agree to pay for a wide variety of medical services for the elderly; however, unless physicians, hospitals, and other health care professionals provide their services, the program is meaningless.

For over a year now I have been receiving letters from hospitals, physicians, and visiting nurses in my State complaining about the length of time it takes to be reimbursed from Medicare. There are many theories as to why this has occurred, but I am not concerned about who is at fault. I am concerned about making this program responsive to those who have agreed to participate.

What has happened is that the number of days it takes for Medicare to reimburse health care providers or elderly beneficiaries has been substantially increasing over the past 2 years. This legislation would correct this problem by requiring that Medicare pay all of its claims within 22 days or pay interest penalties.

Let me give you a particularly appalling example of the effects of delayed Medicare reimbursement.

More than a year ago, Dr. Joseph Ruisi wrote a letter to me explaining his problems with delayed reimbursement. Here is an excerpt from that letter:

"In August of 1984, I voluntarily agreed to accept assignment for all Medicare claims for one year and thus became a participating physician. I did this in good faith and primarily to assist my elderly clientele. Prior to signing this agreement, I was interviewed by a representative of the Medicare carrier in Rhode Island who assured me that by being a participating physician my claims would be processed expeditiously and that I could expect reimbursement approximately every two weeks.

"Within a matter of weeks after signing this agreement, I became aware that our cash flow was reduced nearly to zero. This was an alarming experience. I talked to the fiscal intermediary in the State and told them that unless payments from Medicare were received at regular intervals, after our claims had been forwarded to Medicare, I would be forced to close our office. This actually took place. My office was closed on December 31, 1984, because of no 'cashflow.'

"Since the closing of my office, we have continued to service our former clients by giving them copies of their records and recommending physicians they might call to continue their services for medical needs."

What happened to this physician is unconscionable and unnecessary. How can we expect health care providers to participate in Medicare if we do not reimburse them in a timely manner? We are not talking about inappropriate reimbursement, we are talking about reimbursement that is legitimately due to these providers.

This problem is not limited to those who provide health care services to the elderly, it also affects some Medicare beneficiaries directly. My colleague from Minnesota has outlined some particularly disturbing examples of the effects of delayed reimbursement to Medicare beneficiaries.

I urge my colleagues in the Senate to join this effort to correct this problem. As Congress continues to reform and restructure the Medicare Program it is essential that we keep in mind our goals of high quality of care, fair administration of benefits, appropriate payment of benefits and a speedy and fair resolution of disputes. The Medicare Timely Payment Amendments of 1986 will further these goals.

Mr. CHILES. Mr. President, I am pleased to cosponsor the Medicare Timely Payment Amendments of 1986 along with Senators DURENBERGER, BAUCUS, HEINZ, ABDNOR, and ANDREWS.

The bill would require that Medicare claims, once they are submitted to Medicare carriers and intermediaries for processing, are paid within 22 days of receipt. Some additional time would be allowed, if necessary, to complete claims which are submitted without appropriate or complete information. If more information is needed to complete a clean claim, however, the contractor would still be required to notify the person submitting the claim of the need for more information within the same 22-day period. Once the claim is complete, it must be paid under the same timely payment standard. If claims are not paid according to this standard, an interest penalty would be paid. The interest penalty would be the same amount specified in Government procurement law, such as the Prompt Payment Act and the Contract Disputes Act.

Mr. President, I actually hope that it will not be necessary to enact this legislation. I hope that the Health Care Financing Administration and the Office of Management and Budget will find a way together, without legislation, to reverse a misguided policy of deliberate delay in payment of Medicare claims—a policy which has caused hardship for thousands of Medicare beneficiaries, prompted physicians to give up on the Medicare participating

physician program, and sent physicians, home health care agencies, medical equipment supplies, and other smaller health care providers running to the bank to borrow money to keep their businesses going.

That is what I found during I held in Jacksonville, FL, to explore this situation. Medicare beneficiaries were having to wait for up to 4 and 6 months to get reimbursement of claims filed. Physicians who normally would allow beneficiaries to wait for Medicare reimbursement before collecting large medical bills were now telling them that they could not wait anymore and they'd have to pay before Medicare came through. Providers were having to take out bank loans to cover their office cash-flow problems as they waited months for Medicare reimbursement for services long ago provided to beneficiaries.

Two weeks ago, on June 4, 1986, I introduced a resolution, Senate Resolution 420, calling upon the Health Care Financing Administration to reverse its claims payment slowdown policy. The resolution, which now has 23 cosponsors, further expressed the sense of the Senate that if the policy was not reversed, the Senate should pass legislation to require prompt payment. This bill follows up on that commitment, and serves as a continued demonstration of our concern about this policy.

Mr. President, as I pointed out in my statement on the Senate floor 2 weeks ago, this slowdown policy has been pursued for two reasons: One, claims held over and not paid until the next fiscal year will not show up in the budget now, but later. If the time claims are kept on hand before they are paid is gradually increased, as has been HCFA's policy, you can keep on showing false budget savings over a long period of time—3 years. Two, the longer claims are held before they are paid, the longer the Medicare money stays in the trust fund earning interest. The administration's own testimony indicated a plan to "save" Medicare about $130 million this year in this way. But these "savings" are hardly worth the hardship, bad feelings, and distrust of the whole Medicare Program which this policy has engendered. This is not the kind of price we want to pay for what are largely false savings in the first place.

There have been some hopeful signs in recent days. Since the hearing I held in Florida, the administration has released $15 million in additional administrative funds from a contingency fund to help contrators build back up to a point where they can begin to take care of some of the millions of claims which have been sitting in boxes waiting to be processed and paid.

This morning at a hearing before the Small Business Committee a representative from the Health Care Financing Administration finally acknowledged that they had underestimated the number of claims which would have to be processed this year by about 21 million claims. There is now a new HCFA "goal" of processing most clean claims within 27 days.

If that goal can be met, it is better than current policy which sets an "average" claim turnaround time of 30 days but still leaves thousands and thousands of claims pending for many months. But it is still a far cry from the performance of 2 years ago, when claims were paid, on average, within 12.5 days.

Mr. President, I hope the administration will continue to take a hard look at this situation. All claims must be paid promptly, whether we determine a fair standard of promptness is 27 days, 22 days, or 12 days. In the meantime, we will continue to do all we can here in Congress to ensure that a timely standard is met.

Mr. MITCHELL. Mr. President, today I join with my colleagues Senators DURENBURGER and BAUCUS in cosponsoring the Medicare Timely Payments Amendments of 1986.

This legislation addresses an issue of serious concern to Medicare providers and beneficiaries by requiring timely payments to be made by Medicare fiscal intermediaries and carriers.

The Health Care Financing Administration has implemented a policy to deliberately slowdown Medicare payments to beneficiaries and providers who submit claims for covered medical services. These deliberate delays by the administration are causing great hardship to many, including small hospitals and rural clinics which are already experiencing cash flow problems under Medicare.

Home health agencies who contract with Medicare are also affected by this delay in payment at a time when the administration is attempting to implement other reductions in reimbursement for home health care. These providers, who are operating on a narrow margin, cannot afford a delay in reimbursement.

Low and middle income elderly beneficiaries will perhaps be hurt most by the delay in payments. Many of the Nation's elderly live on extremely modest fixed incomes. Health care consumes a disproportionate share of their income, and many cannot afford to pay for physician's visits without prompt Medicare reimbursement.

The administration has openly admitted that the longer a Medicare claim is held before it is processed, the longer the money stays in the Medicare trust fund. The interest earned as a result of this slowdown is estimated by the administration to be about $130 million this year.

We can assume therefore, that the $130 million in interest earned by the administration represents an equal cost to providers who will have to borrow that amount to remain financially solvent while they are waiting for their delayed payments.

The funding for administrative costs of the Medicare Program has indeed been reduced in recent years, including the 4.3 percent sequester under Gramm-Rudman. There has, however, been money available this year in a special Medicare contractor contingency fund, which could have been released to help meet the claims processing crisis. It was not until congressional pressure was applied to HCFA that the funding was released.

The legislation we introduce today will require the Health Care Financing Administration to issue and mail Medicare payments for "clean claims" within 22 days of their receipt.

Failure to issue the payment within 22 days will result in interest penalties to be paid to the provider or beneficiary.

The bill also requires a prompt notfication of 22 days to providers of any defect or impropriety in the claim or circumstance requiring special treatment that prevents the claim from being tested as a clean claim and prevents timely payment from being made.

This legislation will require the Federal Government to deal with Medicare providers and beneficiaries in a fair and equitable manner. We cannot allow our small, rural hopitals, home health agencies, and elderly Medicare beneficiaries to bear an unjust financial burden as a result of this HCFA policy.

I urge my colleagues to join with me in supporting this important piece of legislation.

Mr. BENTSEN. Mr. President, I am pleased to join my colleague from Minnesota, Senator DURENBERGER as a cosponsor of S. 2576, a bill designed to require timely payment of claims under the Medicare program.

Having spoken at some length on this matter on June 4 of this year, I would simply reiterate my believe that the Federal Government, as purchaser of health services for more than 31 million Americans, has a responsibility to be fair in its dealings with beneficiaries and providers of care.

Mr. President, officials with the administration have instructed Medicare carriers and intermediaries to delay payment of claims and to allow backlogs to develop as a budget savings device. The Office of Management and Budget estimates this deliberate slowdown policy will earn about $130 million in interest payments for the Federal Government in 1986. One hundred and thirty million dollars is a great deal of money—particularly in light of the fact that it represents a dollar for dollar loss for the benefici-

ary, physician, home health agency, hospital or other service provider who is being denied prompt payment.

Beneficiaries and the providers of care are being forced to wait for weeks and sometimes months before being reimbursed for the bills they have paid or the services they rendered. Administration officials tell us that slowdowns are needed to save money, but as a former businessman, I have a hard time understanding a policy that permits the Federal Government to delay payment of its bills for as long as 6 months. In my view, deliberate withholding of payment for that long is tantamount to taking an unauthorized loan from the elderly, the disabled, physicians, small hospitals, home health agencies, equipment dealers and others who are not being paid on time.

Mr. President, S. 2576 is a good first step. I am well aware that a clever budgeteer could subvert the intent of prompt payment by remitting claims to the beneficiary or provider for "additional information"—a process that could delay payment for an excessive period of time. For that reason, I would like to see the language of the bill made more precise with respect to the procedures we expect carriers and intermediaries to follow in meeting the 22 day processing requirement. For example, it is critical that claims be logged in at the time they are received by the intermediary; that billing be permitted at regular intervals; and that the practice of rejecting claims for lack of sufficient information be monitored carefully. These details can be addressed during mark-up of the bill in the Finance Committee later this year.

Let me turn, for a moment, to a second concern that is closely related to the issue of prompt payment. I understand that legislation similar to S. 2576 will be introduced in the House of Representatives by Congressman GRADISON.

The House measure is expected to include a provision blocking implementation of the regulation published by the Health Care Financing Administration that would abolish periodic interim payments [PIP] in 1987. S. 2576 is silent on this proposal, but silence should not be interpreted as concurrence in the judgment that PIP is expendable. When the Finance Committee takes up this bill, I intend to raise the question of whether PIP might be needed to ensure financial stability among the more vulnerable providers such as home health agencies, small and disproportionate share hospitals, and other providers whose reimbursement continues to be cost based. Moreover, I am reluctant to agree to termination of PIP without evidence that the administration is prepared to comply with the letter and the spirit of prompt payment. In the absence of such evidence, it might be more prudent to phase out periodic interim payments of the larger institutions.

Mr. President, it is time to overturn a policy that is threatening to undermine much of the effective reform that we have achieved in the Medicare Program over the last 3 years. I urge my colleagues to join with us in support of S. 2576.

By Mr. LAUTENBERG (for himself, Mr. BRADLEY, Mr. MOYNIHAN, Mr. HEINZ, and Mr. SPECTER):

S. 2577. A bill to insure that amounts paid for home improvements to mitigate indoor air contaminants such as radon gas qualify for the tax deduction for medical care expenses; to the Committee on Finance.

RADON MITIGATION CLARIFICATION ACT

● Mr. LAUTENBERG. Mr President, today I introduce legislation—the Radon Mitigation Clarification Act of 1986—to clarify the law on the deductibility of medical care expenses. It would make it clear that a taxpayer can deduct, as a medical care expense, necessary home improvement expenses, incurred to remove measurably harmful levels of cancer-causing radon gas.

Mr. President, I am pleased to be joined in introducing this legislation by Senators BRADLEY, MOYNIHAN, HEINZ, and SPECTER.

Mr. President, I offered the text of this bill as an amendment to the tax reform bill earlier today. The chairman of the Finance Committee assured me that the committee would hold hearings on this matter. With that assurance, and the expression of interest by my colleague, Senator BRADLEY, I agreed to withdraw the amendment.

Radon contamination of the home is a serious problem. Radon gas poses the greatest threat of lung cancer to Americans, next to smoking. Radon gas contaminates roughly 1 million homes. The residents of those homes will have to take measures—in many cases, expensive measures—to reduce radon levels in their homes in order to safeguard their health. These expenses are health-related and they should qualify as deductible medical care expenses.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2577

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Radon Mitigation Clarification Act of 1986."

SEC. 2. FINDINGS.

The Congress finds that—

(1) indoor air contamination has become the focus of increasing concern among public health officials in the United States,

(2) the problem of indoor radon gas contamination has been found in areas throughout the United States and has been estimated by the Federal Centers for Disease Control to be responsible for as many as 5,000 to 30,000 lung cancer deaths annually in the United States,

(3) mitigation of indoor radon gas exposure is necessary to protect the health of residents,

(4) mitigation of indoor radon gas exposure prevents increased risk of lung cancer, and

(5) mitigation of indoor radon gas exposure can be costly, imposing excessive financial burdens on homeowners.

SEC. 3. HOME IMPROVEMENTS TO MITIGATE HARMFUL LEVELS OF RADON GAS EXPOSURE QUALIFY FOR MEDICAL CARE EXPENSE TAX DEDUCTION.

(a) IN GENERAL.—For purposes of section 213(d)(1) of the Internal Revenue Code of 1954 (defining medical care) amounts paid for necessary home improvements to mitigate measured harmful levels of radon gas exposure shall be treated—

(1) as expenses paid for medical care, and

(2) in the same manner as amounts paid for other home improvements which qualify as expenses paid for medical care.

(b) EFFECTIVE DATE.—Subsection (a) shall apply to taxable years beginning after December 31, 1985.●

By Mr. SPECTER (for himself and Mr. MOYNIHAN):

S. 2578. A bill to provide, through greater targeting, coordination, and structuring of services, assistance to strengthen severely economically disadvantaged individuals and families by providing greater opportunities for employment preparation, which can assist in promoting family economic stability; to the Committee on Labor and Human Resources.

S. 2579. A bill to amend part A of title IV of the Social Security Act to promote the transition of severely economically disadvantaged individuals to unsubsidized employment; to the Committee on Finance.

EMPLOYMENT ASSISTANCE LEGISLATION

Mr. SPECTER. Mr. President, today, my distinguished colleague Senator MOYNIHAN and I are introducing major welfare reform legislation to help get people off the welfare rolls, and place them on the pay rolls. This legislation is geared to turning existing government policy away from breaking up the family, and will implement policies which will help strengthen the family unit: Our bills, the Opportunities for Employment Preparation Act and the Aid to Families and Employment Transition Act will give poor people a needed "hand up" instead of the traditional "handout."

This legislation targets severely economically disadvantaged families, and assists them in obtaining employment preparation and support services which would promote family economic stability. The priority population for

this initiative is Aid to Families with Dependent Children [AFDC] beneficiaries, and unemployed two-parent families where the principal wage earner has not had steady employment for over 2 years.

Recently, particular concerns have been raised about the plight of the black family in America. On February 4, 1986, at a press conference in my Washington office, my good friend, Rev. Leon H. Sullivan, founder and chairman of OIC of America, discussed his concern about the decline of the black family, and the increasingly negative impact of unemployment, teenage pregnancy, female headed households, poverty, and existing Government policies on this problem. I offered my assistance in helping promote pro-family policies by developing legislation which would enable poor black, Hispanic, and other needy families to gain greater access to employment preparation opportunities. Subsequently, my office worked with OIC and the National Urban League to develop the legislation which Senator MOYNIHAN and I are offering today.

I unveiled the concept of this package at the OIC 22d Annual Convocation in San Antonio, TX, on Monday, May 26, 1986, at a joint press conference with Rev. Sullivan and John E. Jacob, president of the National Urban League, both of whom endorsed the concept. Mr. Jacob views my legislation as an initiative which addresses the gross misapplication of the Nation's resources, both financially and humanwise. He expressed the view that my initiative would help the United States take advantage of the Human resources that we have in the Nation.

Rev. Sullivan, who has long been the Nation's foremost expert in job training, hails this initiative as an important step in helping to strengthen needy families and aiding them in becoming financially independent.

Today, more than ever before, poor black, Hispanic, and white families are in need of a hand up. As chairman of the Senate Juvenile Justice Subcommittee, and cochair of the Senate children's caucus and I know what growing up in poverty does to our children—our next generation—our future leaders:

First. Twenty percent of the children growing up in America—over 14 million children, are growing up in poverty.

Second. In female-headed households, more than 50 percent of all children are poor.

Third. Female-headed households rose from 4.5 million in 1960 to 10.1 million in 1985.

Fourth. Female-headed households are likely to remain poor for longer periods than two-parent families.

Fifth. Almost half of all black families are headed by women; the poverty rate of black female headed households is 67 percent.

Sixth. Although black female headed families constitute only 4 percent of the population, they constitute 33 percent of all poor households that remain in poverty for more than 8 consecutive years.

Poverty has special disadvantages for children because its effects are cumulative. A child born into poverty will have difficulty acquiring the skills that could enable him or her to eventually break out of the cycle of poverty.

If these children—our children are to have a chance to break out of this cycle of poverty, their parents must be given the opportunity to earn their own way with skills and jobs.

Encouraging strong and stable families has long been regarded as an important Federal policy goal. In reality, however, Federal policy has been passive, if not downright destructive in the face of some problems currently affecting the family unit. Despite a social policy which favors economic self-sufficiency for most persons, no serious large scale effort has been made to help long-term Aid to Families with Dependent Children [AFDC] adults benefit from mainstream employment training and education programs which would help them to qualify and compete for jobs that would enable them to support their families.

AFDC was established as part of the Social Security program during the Depression to provide cash benefits to impoverished mothers, most of whom were widows raising children in the absence of a male breadwinner. The program is a Federal/State initiative with the Federal Government paying about 55 percent of the costs.

Contrary to popular myths, many welfare mothers are highly motivated and want to support themselves, but work programs and employment training initiatives must provide adequate support services such as child care, transportation to work or to training, and remedial education in basic skills. Essentially what is needed is a combination of counseling, training, social support services, and work experience which meet the needs of the trainee, and which prepares her for employment. And this program must reach down further than the cream of the crop to help long-term welfare and long-term unemployed families. To be effective, we must reach those families who remain untouched by the employment training activities taking place in this country, and who are therefore at a very high risk for long-term dependence on government assistance.

In addition, as we seek to help families become independent, we must remove barriers created by government, which require that families be broken apart before the government will provide income assistance. Currently, 24 States deny AFDC benefits to families with an able-bodied father in the household. Such regulations have a devastating effect on black and other minority families where high unemployment rates, and the decline of industry make it extremely difficult for unskilled and semiskilled males to provide adequate support. My legislation addresses these issues.

These bills, the Opportunities for Employment Preparation Act and the Aid to Families and Employment Transition Act, are a three-part initiative. The opportunities for Employment Preparation Act amends the Job Training Partnership Act to establish a "feeder" system utilizing community-based employment training programs like OIC, the National Urban League, SER-Jobs for Progress, United Way of America, 70,001, the National Puerto Rican Forum, and the National Council of LaRaza, to conduct outreach and provide preemployment services which will enable long-term AFDC recipients and long-term unemployed participants from two parent families to have greater access to, and benefit more fully from, employment preparation opportunities available through the Job Training Partnership Act [JTPA], adult and vocational education programs, or other educational preparation which can lead to employment.

The outreach and feeder system is based on the OIC model, and will offer a range of services which include:

Skills assessments for participants.

Registration with the Bureau of Employment Security.

An 8-week internship for participants with no work experience, or who wish to try a different type of work setting. The internship is preceded by a structured search and interview process.

Educational preparation and basic skills development to increase literacy and computational skills.

Programs to strengthen the attitude and motivation of youth toward the world of work.

Parenting, home and family living skills and nutrition and health education targeted to teenage parents.

Guidance and counseling to assist participants with occupational choices and with the selection of employment preparation programs.

Counseling and information and referral to assist participants experiencing personal or family problems, which may cause severe stress, and lead to poor performance, or dropping out of training.

Following the preemployment program, participants will be able to go on to employment training, including vocational and adult education, community college programs, or other postsecondary programs. Another skills assessment will be conducted, and the

participant can then participate in on the job training [OTJ] and other appropriate services available under the Job Training Partnership Act.

The Aid to Families and Employment Transition Act amends title IV of the Social Security Act to provide that AFDC beneficiaries making the transition to unsubsidized employment shall have the first year of salary excluded from determination of AFDC eligibility. Further, AFDC benefits will not be forfeited in a family where a second parent returns to the household, if at least one parent participates in an employment preparation program.

In addition, it provides that persons making a transition to unsubsidized employment shall maintain medicaid coverage until eligible for an employer health plan, or for a period not to exceed 15 months.

Mr. President, this legislation seeks to assist AFDC and long-term unemployed families off the welfare rolls, and place them on the pay rolls. This package is geared to turning the effect of existing government policy away from breaking up the family, and provide a means to implement policies which help strengthen the family unit.

Mr. President, in fiscal year 1985 the Federal share of the AFDC program was approximately $9 billion dollars. The Department of Health and Human Services projects that the Federal tab will total $9.3 billion in fiscal year 1986. According to the National Conference of State Legislatures combined spending for welfare totals approximately $63 billion. This plan will use existing funds and will be cost neutral.

Our Nation cannot afford the long-term costs of failing to create training and employment opportunities for the poor. The only way America will be able to continue to compete in the world's markets if it makes maximum use of a productive, trained work force. A better trained, more highly skilled work force would mean spending fewer Federal dollars on welfare programs while returning higher tax revenues.

Mr. President, the task before us is clear. We must provide greater opportunities for training, embrace policies which help create employment, and strengthen efforts to equalize opportunities so that poor families can get a hand up instead of being forced into receiving a hand out. This legislation which Senator MOYNIHAN and I are introducing today is a vital first step in that process.

Mr. President, I ask unanimous consent that the text of the bills be printed in the RECORD at this point.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2578

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Opportunities for Employment Preparation Act of 1986".

SEC. 2. It is the purpose of the amendments made by this Act to provide, through greater targeting, coordination, and structuring of services, assistance to strengthen severely economically disadvantaged individuals by providing greater opportunities for employment preparation, which can assist in promoting economic family stability.

SEC. 3. Section 4 of the Job Training Partnership Act (hereafter referred to in this Act as the "Act") is amended by adding at the end thereof the following new paragraph:

"(29) The term "severely economically disadvantaged" means individuals—

"(A) who receive benefits under a State plan approved under part A of title IV of the Social Security Act, relating to aid to families with dependent children, for a period of 2 years prior to the date on which the determination is made and includes individuals who are parents of young children who have left the household of the family, lived separately from the family, and returned to the family unit; and

"(B) who have been unemployed or who have been without city employment for a period of 2 years prior to the date on which the determination is made.

SEC. 4. (a) Section 104(b) of the Act is amended—

(1) by redesignating clauses (7) (8), (9), and (10) as clauses (8), (9), (10), and (11), respectively; and

(2) by adding after clause (6) the following new clause:

"(7) a description of the procedures and methods of carrying out the outreach and training activities for severely economically disadvantaged individuals required by section 109;".

(b) Part A of title I of the Act is amended by adding at the end thereof the following new section:

"TARGETED ASSISTANCE FOR SEVERELY ECONOMICALLY DISADVANTAGED INDIVIDUALS

"SEC. 109. (a) The job training program in each service delivery area shall establish a feeder system utilizing community based organizations such as OIC, the National Urban League, the National Council of La Raza; and 70,001 to conduct outreach and provide preemployment services to severely economically disadvantaged individuals in order to provide such individuals greater access to and benefit more fully from employment opportunities available under this Act and to prepare such individuals for gainful employment.

"(b) The outreach and feeder system established by subsection (a) of this subsection shall include—

"(1) skills assessment for participants;

"(2) registration with the Bureau of Employment Security;

"(3) preemployment training including an eight week internship;

"(4) employment training including vocational, adult, and community college and other postsecondary programs;

"(5) on-the-job training and other employment preparation activities available under this Act.

"(c)(1) Preemployment training required by clause (3) of subsection (b) shall include structured search for an 8 week internship with a private or public agency. Each participant must search and interview for placement from a list of options provided by community based organizations. The internship shall be designed for program participants with no previous work experience, or who need or wish to try a different type of work setting. Preemployment services provided shall include—

"(A) educational preparation and basic skills development to increase literacy and computational skills;

"(B) Program developed to strengthen the attitude and motivation of youth to achieve and succeed in the world of work;

"(C) guidance and counseling to assist participants with occupational choices and with the selection of employment preparation programs;

"(D) counseling and information and referral to assist participants experiencing personal or family problems, which may cause severe stress, and lead to poor performance or dropping out of the program; and

"(E) parenting, and home and family living skills, including nutrition and health education, targeted to teenage parents.

"(2) Participants in training activities under this section shall receive supportive services, including child care and transportation assistance, notwithstanding any other provision of this Act relating to cost limitations or expenses.

"(d) The performance standards for the program authorized by this section shall be the performance standards prescribed for youth under section 106(b)(2) of this Act.

"(e) Notwithstanding any other provision of law, unless enacted in the express limitation of this subsection, the amount of any benefits received under this Act (including scholarships and educational assistance) participants in the program authorized by this section shall not result in the loss of or the decrease in any other benefits (including AFDC and food stamps) to which the recipient is entitled under any provision of Federal law.".

(c) Section 121(b) of the Act is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by adding after paragraph (2) the following new paragraph:

"(3) The plan shall include a description of the agreement between the private industry council, the public welfare or public assistance agency of the State, and the designated community based organizations involved in the targeted assistance required by section 108, together with the manner in which the State will coordinate vocational education, adult education, other training programs authorized by Federal law, and employment preparation programs to benefit the participants of the program authorized by section 109.".

S. 2579

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Aid to Families and Employment Transition Act of 1986.".

SEC. 2. AFDC EARNED INCOME DISREGARD FOR SEVERELY ECONOMICALLY DISADVANTAGED INDIVIDUALS.

Section 402(a)(8)(A) of the Social Security Act is amended—

(1) by striking "and" at the end of clause (vi); and

(2) by inserting after clause (vii) the following:

"(vii) notwithstanding clause (v), shall disregard—

"(I) the income of any child, relative, or individual specified in clause (ii) that is derived from a program established pursuant to the amendments made by the Opportunities for Employment Preparation Act of 1986, and

"(II) the income of an individual specified in subclause (I) that is derived from unsubsidized employment obtained pursuant to the program specified in such subclause, for the 12-month period following the initial placement of the individual; and.".

SEC. 3. MEDICAID COVERAGE FOR SEVERELY ECONOMICALLY DISADVANTAGED INDIVIDUALS.

Section 402(a)(37) of the Social Security Act is amended—

(1) by inserting "(A)" after "(37)"; and

(2) by adding at the end the following:

"(B) provide that, in any case where a family would cease to receive aid under the plan but for subclause (II) of paragraph (8)(A)(viii), such family shall continue to be eligible for medical assistance under title XIX for the period beginning with the first day of the 12-month period specified in such subclause and ending with the earlier of (i) the date on which the family becomes eligible to participate in a group health plan maintained by an employer, or (ii) the last day of the 3-month period immediately following such 12-month period.".

SEC. 4. AFDC COVERAGE FOR CERTAIN 2-PARENT FAMILIES.

Section 402 of the Social Security Act is amended by adding at the end the following:

"(i) The term 'dependent child' shall, notwithstanding section 406(a), include a needy child who meets the requirements of section 406(a)(2), who lives with both parents, and at least one of the parents is a participant in a program established pursuant to the amendments made by the Opportunities for Employment Preparation Act of 1986 or is in the 12-month period specified in subsection (a)(8)(A)(viii)(II).".

SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title shall become effective on the date of the enactment of this Act.

(b) EXCEPTION.—If a State agency administering a plan approved under part A of title IV of the Social Security Act or under title XIX of such Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by this Act to which the effective date specified in subsection (a) applies, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending more than 30 days after the date of the enactment of this Act. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

By Mr. HELMS (for himself, Mr. EAST, and Mr. ARMSTRONG):

S.J. Res. 366. Joint resolution to disapprove the act of the District of Columbia Council entitled the Prohibition of Discrimination in the Provision of Insurance Act of 1986; to the Committee on Governmental Affairs.

DISAPPROVING AN ACT OF THE DISTRICT OF COLUMBIA COUNCIL

● Mr. HELMS. Mr. President, I rise today along with Senators EAST and ARMSTRONG, to introduce a resolution to disapprove D.C. Law 6-170, called "Prohibition of Discrimination in the Provision of Insurance Act of 1986."

Mr. President, I ask unanimous consent that the text of my proposed resolution be printed in the RECORD at this point.

Mr. President, on May 27, the D.C. Council passed a law prohibiting health, disability or life insurers in the District of Columbia from any AIDS, ARC or HTLV-III testing or using any test result to deny, amend, cancel, or refuse to renew a policy. The law also prohibits an insurer from asking an applicant his/her occupation, sex, sexual orientation, marital status or age for the purpose of determining the probability of the individual contracting AIDS. For 2 years, insurers are prohibited from raising rates of those who test positive for the presence of any probable causative agent of AIDS, ARC or the HTLV-III infection.

Now, Mr. President, let me say at the outset: AIDS is not about civil rights, political clout or "sexual orientation." AIDS is a disease and should be veiwed for what it is. The homosexual rights crowd has managed to twist the AIDS issue into one of civil rights. In an August 2, 1985, Washington Post article, Gary McDonald, executive director of the AIDS Action Council, was quoted as having said:

We have to wear down the old stereotypes, and it is a burning irony that it will take AIDS to do that. . . . But after thousands of men like Rock Hudson, men you thought you knew, go on TV, it's going to get harder to tell those old faggot jokes about swishy limp-wristed men. I'm sorry it's going to take so many dead men to make that point.

The AIDS disease does not have any civil rights, Mr. President, and legislators shouldn't be snookered into thinking that it does. It is a disease, Mr. President, a disease which is killing thousands of Americans each year; a disease which threatens the lives of millions more.

According to a report released by HHS on June 12, 1986, there are 21,517 reported cases of AIDS. Blacks and Hispanics represent 39 percent of the total cases. Women, reporting no history of IV drug abuse represent half of the 1,400 cases in women. Three hundred and four cases have been reported in infants and children under age 13. Between 2 and 3 percent of cases have occurred in transfusion recipients of hemophiliacs.

Mr. President, the report goes on to reveal that by January 1986, there were 9,000 reported deaths attributable to the AIDS virus with 9,000 deaths projected for 1986.

And, according to the report's projections, the number of cases and the number of deaths will skyrocket. By 1991 there will be 196,000 cases. New cases diagnosed for that year will reach 74,000. AIDS will claim the lives of 125,000 Americans by 1991 and take the lives of 54,000 more during the year for a total of 179,000 deaths as Americans ring in 1992. By 1991, there will be more than 3,000 cases in infants and children exposed to the virus during pregnancy or shortly after birth, compared to about 300 to date.

The point, Mr. President, is this: AIDS is a health issue, and the health, life and disability insurers should be allowed to treat it as such. The life insurer can ask about, or require, testing an applicant's high blood pressure, diabetes, cancer, allergys, anemia, alcohol, drug abuse, paralysis and heart attacks, just to name a few. Yet under the D.C. law, the insurer is not allowed to ask anything about the applicant's possibility of developing AIDS.

And who will be harpooned in the pocketbook? Not the insurance industry, Mr. President. The increased cost will be passed on to other policyholders in the form of higher premiums—the policyholders who may already have higher premiums because of being at risk of developing cancer, or at risk of a heart attack. Now, because of the D.C. AIDS law, they will have an even higher premium because someone else is at risk of contracting AIDS. This is unfair Mr. President.

The D.C. AIDS bill sets a dangerous precedent for the rest of the country. It prohibits all AIDS, ARC, or HTLV-III infection testing and it prohibits adjusting premiums for those who test positive. This goes far beyond any other jurisdiction in the country.

Congress has the authority—and the duty to countermand this obvious injustice. My resolution will restore to insurers the right to treat AIDS like they would treat any other high risk disease, and will allow them to adjust premiums accordingly.

Mr. President, I ask unanimous consent that the text of the D.C law be printed in the RECORD at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the RECORD as follows:

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

(To prohibit health, life, and disability insurers in the District of Columbia from discriminating in the provision of insurance coverage or benefits on the basis of any test to screen for the probable causative agent of AIDS, ARC, or HTLV-III infection, and to prohibit any exclusion of benefits because the insured develops AIDS, ARC, or the HTLV-III infection)

Be it enacted by the Council of the District of Columbia, That this act may be cited as

the "Prohibition of Discrimination in the Provision of Insurance Act of 1986".

SEC. 2. Definitions.

For the purposes of this act, the term:

(1) "AIDS" means acquired immune deficiency syndrome as defined by the Centers for Disease Control of the United States Public Health Service.

(2) "ARC" means AIDS-related complex as defined by the Centers for Disease Control of the United States Public Health Service or, during any period when the Centers for Disease Control have not issued a definition, by the District of Columbia Commission of Public Health.

(3) "District" means the District of Columbia.

(4) "Health maintenance organization" means a public or private organization that is a qualifying health maintenance organization under federal regulations, or has been determined to be a health maintenance organization pursuant to regulations adopted by the State Health Planning and Development Agency of the District of Columbia.

(5) "HTLV-III" means human T-lymphotropic virus, type-III.

(6) "Mayor" means the Mayor of the District of Columbia.

(7) "Insurer" means any individual, partnership, corporation, association, fraternal benefit association, nonprofit health service plan, health maintenance organization, or other business entity that issues, amends, or renews individual or group health, disability, or life insurance policies or contracts, including health maintenance organization membership contracts, in the District. The term "insurer" shall include Group Hospitalization and Medical Services, Incorporated.

SEC. 3. Application of the act.

The requirements of this act shall apply to the practices and procedures employed by insurers and their agents and employees in making determinations about any individual or group policy or contract of health, disability, or life insurance.

SEC. 4. Prohibited actions.

(a) An insurer may not deny, cancel, or refuse to renew insurance coverage, or alter benefits covered or expenses reimbursable, because an individual has tested positive on any test to screen for the presence of any probable causative agent of AIDS, ARC, or the HTLV-III infection, including, but not limited to, a test to screen for the presence of any antibody to the HTLV-III virus, or because an individual has declined to take such a test.

(b)(1) In determining whether to issue, cancel, or renew insurance coverage, an insurer may not use age, marital status, geographic area of residence, occupation, sex, sexual orientation, or any similar factor or combination of factors for the purpose of seeking to predict whether any individual may in the future develop AIDS or ARC.

(2) In determining rates, premiums, dues, assessments, benefits covered, or expenses reimbursable, or in any other aspect of insurance marketing or coverage, an insurer may not use age, marital status, geographic area of residence, occupation, sex, sexual orientation, or any similar factor or combination of factors for the purpose of seeking to predict whether any individual may in the future develop AIDS or ARC.

(c) No health or disability insurance policy or contract shall contain any exclusion, reduction, other limitation of coverage, deductibles, or coinsurance provisions related to the care and treatment of AIDS, ARC, HTLV-III infection, or any illness or disease arising from these medical conditions, unless the provisions apply generally to all benefits under the policy or contract.

(d) No life insurance policy or contract shall contain any exclusion, reduction, or other limitations of benefits related to AIDS, ARC, HTLV-III infection, or any disease arising from these medical conditions, as a cause of death.

SEC. 5. Permissible use of tests for ratemaking purposes.

(a) In addition to the prohibitions set forth in section 4, an insurer, during the period of 5 years from the effective date of this act, may not:

(1) Require or request any individual, directly or indirectly, to take any test to screen for the presence of any probable causative agent of AIDS, ARC, or the HTLV-III infection, including, but not limited to, a test to screen for the presence of any antibody to the HTLV-III virus;

(2) Require or request any individual, directly or indirectly, to disclose whether he or she has taken such a test, or to provide or authorize disclosure of the results of the test, if taken by the individual; or

(3) Consider in the determination of rates, premiums, dues, or assessments whether any individual has taken such a test, or the results of the test, if taken by the individual.

(b)(1) Following the period of five years from the effective date of this act, an insurer may apply to the Superintendent of Insurance for permission to increase rates, premiums, dues, or assessments, or impose a surcharge, for individuals who test positive for exposure to the probable causative agent of AIDS. An insurer, in its application, shall identify the test it proposes to use to identify exposure to the probable causative agent of AIDS.

(2)(A) The Superintendent of Insurance, upon receipt of an application described in paragraph (1) of this section, shall first request the District of Columbia Commissioner of Public Health to determine whether the test proposed by the applicant is reliable and accurate in identifying exposure to the probable causative agent of AIDS.

(B) If the District of Columbia Commissioner of Public Health determines that the test is not reliable and accurate, the Superintendent of Insurance shall deny the application.

(C) If the District of Columbia Commissioner of Public Health determines that the test is reliable and accurate, the Superintendent of Insurance shall review the application further and may approve the proposed increase or surcharge if he or she determines that it is fair, reasonable, nondiscriminatory, and related to actual experience or based on sound actuarial principles applied to analyses of a substantial amount of scientific data collected over a period of years.

(D) Upon approval of an application for an increase or surcharge, an insurer may subsequently request or require individuals to take the test specified in its application and may impose the surcharge or increased rates, premiums, dues, or assessments upon those who test positive and those who decline to take the test.

SEC. 6. Diagnosis of AIDS.

(a) Nothing in this act shall be construed as preventing or restricting insurers or their agents or employees from following standard procedures for determining the insurability of or establishing the rates or premiums for new applicants diagnosed by a licensed physician as having AIDS, provided that the procedures:

(1) Apply in the same manner to all other new applicants within the same category of insurance;

(2) Are justified on the basis of actuarial evidence; and

(3) Comply with other laws and rules of the District.

(b) An insurer may request or require a new applicant to take a test otherwise prohibited by this act if:

(1) The test is administered by a licensed physician as a required element of a diagnosis of AIDS; and

(2) Other symptoms of AIDS, as specified by the Centers for Disease Control of the United States Public Health Service, are present to the degree that a licensed physician determines that administration of the test is medically indicated.

SEC. 7. Restrictions on disclosure.

No insurer may request or require an individual to take a test or series of tests pursuant to sections 5 or 6 unless:

(1) The insurer agrees not to disclose the fact of the testing or the test results to any person except as required by law, or as authorized by the individual in writing; and

(2) The individual provides his or her informed consent by signing and dating a statement or agreement, which identifies the specific test or tests to be performed and identifies the person or persons to whom disclosure is authorized.

SEC. 8. Contestability.

An insurer may contest the validity of a policy or contract that was issued, amended, or renewed in a period in which the determination provided in section 5(b) of this act is not in effect for a period of up to 3 years from the date of issuance, amendment, or renewal, if the basis for contesting the validity is that the insured knowingly failed or refused to disclose to the insurer that he or she had AIDS at the time of issuance, amendment, or renewal.

SEC. 9. Special enforcement provisions.

(a) Any practice that circumvents or contravenes or results in a circumvention or contravention of the provisions of this act or rules issued pursuant to this act is a violation of this act.

(b) Each day that a violation continues shall constitute a separate violation. The Corporation Counsel, in seeking penalties for each day of a continuing violation, shall establish to the satisfaction of the Superior Court of the District of Columbia that a violation occurred on each day for which the penalty is sought.

(c) An insurer or its agent or employee who violates any provision of this act or rules issued pursuant to this act shall be subject to a civil penalty of not less than $1,000 or more than $10,000 per violation in the case of insurers, and not less than $50 or more than $300 in the case of agents or employees.

(d) Whenever it appears to the Mayor that an insurer or its agent or employee has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this act or rules issued pursuant to this act, the Mayor shall request the Corporation Counsel to bring an action in the Superior Court of the District of Columbia for penalties and other appropriate relief. Relief may include an injunction commanding compliance with this act and rules issued pursuant to this act. Upon proper showing, a temporary or permanent restraining order shall be granted without bond.

(e) Any person injured by a violation of this act or rules issued pursuant to this act

may bring an action for damages and other appropriate relief in the Superior Court of the District of Columbia in lieu of pursuing administrative remedies.

SEC. 10. Rules.

The Mayor shall issue proposed rules, within 90 days of the effective date of this act, to implement the provisions of this act. The proposed rules shall be submitted to the Council of the District of Columbia ("Council") for a 45-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess. If the Council does not disapprove the proposed rules by resolution, within the 45-day review period, the proposed rules shall be deemed approved. The Council may approve or disapprove the proposed rules, in whole or in part, by resolution prior to the expiration of the 45-day review period.

SEC. 11. Effective date.

This act shall take effect after a 30-day period of Congressional review following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto) as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code, sec. 1-233(c)(1)).●

ADDITIONAL COSPONSORS

S. 1627

At the request of Mr. STEVENS, the name of the Senator from Minnesota [Mr. DURENBERGER] was added as a cosponsor of S. 1627, a bill to provide for the establishment of an experimental program relating to the acceptance of voluntary services from participants in an executive exchange program of the Government.

S. 1761

At the request of Mr. STAFFORD, the name of the Senator from New Hampshire [Mr. HUMPHREY] was added as a cosponsor of S. 1761, a bill to amend the Atomic Energy Act of 1954, as amended, to establish a comprehensive, equitable, reliable, and efficient mechanism for full compensation of the public in the event of an accident arising out of activities of Nuclear Regulatory commission licenses or undertaken pursuant to the Nuclear Waste Policy Act of 1982 involving nuclear materials.

S. 1822

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 1822, a bill to amend the Copyright Act in section 601 of title 17, United States Code, to provide for the manufacturing and public distribution of certain copyrighted material.

S. 2050

At the request of Mr. STAFFORD, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 2050, a bill to notify workers who are at risk of occupational disease in order to establish a system for identifying and preventing illness and death of such workers, and for other purposes.

S. 2083

At the request of Mr. STAFFORD, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 2083, a bill to amend the Toxic Substances Control Act to require the Environmental Protection Agency to set standards for identification and abatement of hazardous asbestos in the Nation's schools, to mandate abatement of hazardous asbestos in the Nation's schools in accordance with those standards, to require local educational agencies to prepare asbestos management plans, and for other purposes.

S. 2401

At the request of Mrs. KASSEBAUM, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 2401, a bill to prohibit the manufacture or distribution in, or the importation into, the United States of certain firearms.

S. 2479

At the request of Mr. TRIBLE, the names of the Senator from Alabama [Mr. DENTON], and the Senator from Wisconsin [Mr. KASTEN] were added as cosponsors of S. 2479, a bill to amend chapter 39 of title 31, United States Code, to require the Federal Government to pay interest on overdue payments, and for other purposes.

S. 2494

At the request of Mr. BRADLEY, the name of the Senator from North Dakota [Mr. BURDICK] was added as a cosponsor of S. 2494, a bill to amend title XVIII of the Social Security Act to modify the limitations on payment for home health services under the Medicare Program to conform regulations; to assure that all legitimate costs are taken into account in calculating such limitations; to provide affected parties an opportunity to comment on revisions in Medicare policies; and to require discharge planning procedures.

S. 2533

At the request of Mr. DIXON, the name of the Senator from Massachusetts [Mr. KENNEDY] was added as a cosponsor of S. 2533, a bill to amend the Food Stamp Act of 1977 and the Temporary Emergency Food Assistance Act of 1983 to alleviate hunger among the homeless by improving certain nutrition programs, and for other purposes.

SENATE JOINT RESOLUTION 143

At the request of Mr. GORE, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of Senate Joint Resolution 143, a joint resolution to authorize the Black Revolutionary War Patriots Foundation to establish a memorial in the District of Columbia at an appropriate site in Constitution Gardens.

SENATE JOINT RESOLUTION 354

At the request of Mr. CHILES, the names of the Senator from Louisiana [Mr. JOHNSTON], and the Senator from California [Mr. WILSON] were added as cosponsors of Senate Joint Resolution 354, a joint resolution to designate the week of October 5, 1986, through October 11, 1986, as "National Drug Abuse Education and Prevention Week".

SENATE CONCURRENT RESOLUTION 145

At the request of Mr. STEVENS, the names of the Senator from Rhode Island [Mr. CHAFEE], the Senator from Rhode Island [Mr. PELL], and the Senator from Virginia [Mr. WARNER] were added as cosponsors of Senate Concurrent Resolution 145, a concurrent resolution to encourage State and local governments and local educational agencies to require quality daily physical education programs for all children from kindergarten through grade 12.

SENATE CONCURRENT RESOLUTION 148

At the request of Mr. SYMMS, the names of the Senator from Iowa [Mr. GRASSLEY], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Concurrent Resolution 148, a concurrent resolution expressing the sense of Congress concerning the nuclear disaster at Chernobyl in the Soviet Union.

SENATE RESOLUTION 420

At the request of Mr. CHILES, the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of Senate Resolution 420, a resolution to express the sense of the Senate regarding prompt payment of Medicare claims.

SENATE RESOLUTION 424

At the request of Mrs. HAWKINS, the names of the Senator from New York [Mr. MOYNIHAN], the Senator from New Jersey [Mr. BRADLEY], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Arkansas [Mr. PRYOR], and the Senator from Tennessee [Mr. GORE] were added as cosponsors of Senate Resolution 424, a resolution commending Colonel Ricardo Montero Duque for the extraordinary sacrifices he has made to further the cause of freedom in Cuba, and for other purposes.

SENATE RESOLUTION 429

At the request of Mr. DURENBERGER, the name of the Senator from Vermont [Mr. LEAHY] was added as as a cosponsor of Senate Resolution 429, an original resolution increasing the limitations on expenditures by the Select Committee on Intelligence for the procurement of consultants.

AMENDMENT NO. 2059

At the request of Mr. STEVENS, the name of the Senator from Wisconsin [Mr. KASTEN] was added as a cosponsor of Amendment No. 2059 intended to be proposed to H.R. 3838, a bill to reform the internal revenue laws of the United States.

SENATE CONCURRENT RESOLUTION 151—EXPRESSING THE SENSE OF THE CONGRESS ON UNITED STATES POLICY TOWARD AFGHANISTAN

Mr. BYRD (for himself, Mr. SASSER, and Mr. PROXMIRE) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 151

Whereas the Soviet Union invaded the sovereign territory of Afghanistan on December 27, 1979, and continues to occupy and attempt to subjugate that nation through the use of force, relying upon a puppet regime and an occupying army of an estimated 120,000 Soviet troops;

Whereas the outrageous and barbaric treatment of the people of Afghanistan by the Soviet Union is repugnant to all freedom-loving peoples as reflected in seven United Nations resolutions of condemnation, violates all standards of conduct befitting a responsible nation, and contravenes all recognized principles of international law;

Whereas the Special Rapporteur of the United Nations Commission on Human Rights, in his November 5, 1985 report to the General Assembly, concludes that "whole groups of persons and tribes are endangered in their existence and in their lives because their living conditions are fundamentally affected by the kind of warfare being waged" and that "[t]he Government of Afghanistan, with heavy support from foreign [Soviet] troops, acts with great severity against opponents or suspected opponents of the regime without any respect for human rights obligations" including "use of anti-personal mines and of so-called toy bombs;" and "the indiscriminate mass killings of civilians, particularly women and children";

Whereas the Special Rapporteur also concludes that the war in Afghanistan has been characterized by "the most cruel methods of warfare and by the destruction of large parts of the country which has affected the conditions of life of the population, destabilizing the ethnic and tribal structure and disrupting family units" and that "[t]he demographic structure of the country has changed, since over 4 million refugees from all provinces and all classes have settled outside the country and thousands of internal refugees have crowded into the cities like Kabul";

Whereas the United Nations General Assembly, in a recorded vote of 80-22 on December 13, 1985, accepted the findings of the Special Rapporteur and deplored the refusal of Soviet-led Afghan officials to cooperate with the United Nations, and expressed "profound distress and alarm" at "the widespread violations of the right to life, liberty and security of person, including the commonplace practice of torture and summary executions of the regime's opponents, as well as increasing evidence of a policy of religious intolerance";

Whereas, in a subsequent report of the Special Rapporteur of February 14, 1986, the Special Rapporteur found that "The only solution to the human rights situation in Afghanistan is the withdrawal of the foreign troops" and that "Continuation of the military solution will, in the opinion of the Special Rapporteur, lead inevitably to a situation approaching Genocide, which the traditions and culture of this noble people cannot permit."

Whereas the Soviet invasion of Afghanistan caused the United States to postpone indefinitely action on the SALT II Treaty in 1979, and the presence of Soviet troops in that country today continues to adversely affect the prospects for long-term improvement of the U.S.-Soviet bilateral relationship in many fields of great importance to the globe community;

Whereas the Soviet leadership appears to be engaged in a calculated policy of raising hopes for a withdrawal of Soviet troops from Afghanistan in the apparent belief that words will substitute for genuine action in shaping world opinion; and

Whereas President Reagan, in his February 4, 1986 State of the Union Address promised the Afghan people that, "America will support with moral and material assistance your right not just to fight and die for freedom, but to fight and win freedom. . .";

Therefore, be it

Resolved by the Senate (the House of Representatives concurring).

SECTION 1. The United States, so long as Soviet military forces occupy Afghanistan, should support the efforts of the people of Afghanistan to regain the sovereignty and territorial integrity of their nation through—

(a) the appropriate provisions of material support;

(b) renewed multilateral initiatives aimed at encouraging Soviet military withdrawal, the return of an independent and nonaligned status to Afghanistan and a peaceful political settlement acceptable to the people of Afghanistan, which includes provision for the return of Afghan refugess in safety and dignity;

(c) a continuous and vigorous public information campaign to bring the facts of the situation in Afghanistan to the attention of the world;

(d) frequent efforts to encourage the Soviet leadership and the Soviet-backed Afghan regime to remove the barriers erected against the entry into and reporting of events in Afghanistan by international journalists; and

(e) vigorous efforts to impress upon the Soviet leadership the penalty that continued military action in Afghanistan imposes upon the building of a long-term constructive relationship with the United States, because of the negative effect that Soviet policies in Afghanistan have on attitudes toward the Sovet Union among the American people and the Congress.

SEC. 2. The Secretary of State should

(a) determine whether the actions of Soviet forces against the people of Afghanistan constitute the international crime of Genocide as defined in Article II of the International Convention on the Prevention and Punishment of the Crime of Genocide, signed on behalf of the United States on December 11, 1948, and, if the Secretary determines that Soviet actions may constitute the crime of Genocide, he shall report his findings to the President and the Congress, along with recommended actions; and,

(b) review United States policy with respect to the continued recognition of the Soviet puppet government in Kabul to determine whether such recognition is in the interest of the United States.

AMENDMENTS SUBMITTED

TAX REFORM ACT OF 1986

EVANS (AND OTHERS) AMENDMENT NO. 2104

Mr. EVANS (for himself, Mr. ABDNOR, Mr. GRAMM, Mr. CHILES, Mr. GORTON, Mr. PRESSLER, Mr. DODD, and Mr. JOHNSTON) proposed an amendment to the bill (H.R. 3838) to reform the internal revenue laws of the United States; as follows:

On page 1415, beginning with line 10, strike out all through page 1416, line 4, and insert:

SEC. 135. DEDUCTION FOR STATE AND LOCAL SALES TAX.

(a) IN GENERAL.—Paragaph (4) of section 164(a) (relating to deduction for taxes) is amended to read as follows:

"(4) 60 percent of the excess (if any) of—

"(A) State and local general sales taxes paid or accrued by the taxpayer during the taxable year, over

"(B) State and local income taxes paid or accrued by the taxpayer during the taxable year."

(b) SPECIAL RULE FOR TAXES IN CONNECTION WITH ACQUISITION OR DISPOSITION OF PROPERTY.—Section 164(b) (relating to definitions and special rules) is amended by adding at the end thereof the following new paragraph:

"(6) CERTAIN NONDEDUCTIBLE TAXES.—In the case of any tax which is paid or accrued by the taxpayer in connection with the acquisition or dispositor of any property and with respect to which no deduction is allowed under this chapter, such tax shall—

"(A) in the case of the acquisition of property, be included in the basis of such property, and

"(B) in the case of disposition of property, allowable as a deduction in computing the amount realized on such disposition."

On page 1589, between lines 8 and 9, insert:

SEC. 423. EXCEPTION OF CERTAIN DEALERS FROM THE HEDGING TRANSACTION EXCEPTION.

(a) IN GENERAL.—Section 1256(e) (relating to mark to market not to apply to hedging transactions) is amended by adding at the end thereof the following new paragraph:

"(6) SPECIAL RULE FOR DEALERS.—Paragraph (1) shall not apply to any transaction entered into by a dealer, other than a dealer in agricultural or horticultural commodities (except trees which do not bear fruit or nuts)."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to positions established after December 31, 1986.

At the appropriate place in title V, insert the following new section:

SEC. . TINS REQUIRED FOR DEPENDENTS CLAIMED ON TAX RETURNS.

(a) IN GENERAL.—Section 6109 (relating to identifying numbers) is amended by adding at the end thereof the following new subsection:

"(e) FURNISHING NUMBER FOR CERTAIN DEPENDENTS.—Any person making a return in which is claimed a dependent (as defined in section 152) who has attained the age of 5 years shall include in such return such identifying number as may be prescribed for se-

curing proper identification of such dependent."

(b) PENALTY FOR FAILURE TO SUPPLY TIN.—Section 6676 (relating to failure to supply identifying numbers) is amended by adding at the end thereof the following new subsection:

"(e) PENALTY FOR FAILURE TO SUPPLY TIN OF DEPENDENT.—If any person required under section 6109(e) to include the TIN of any dependent in his return fails to comply with such requirement, such person shall, unless it is shown that such failure is due to reasonable cause and not willful neglect, pay a penalty of $5 for each such failure.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1986.

LAUTENBERG AMENDMENT NO. 2105

Mr. LAUTHENBERG proposed an amendment to the bill (H.R. 3838), supra; as follows:

At the appropriate place in title XVII, insert the following new section:

SEC. . HOME IMPROVEMENTS TO MITIGATE HARMFUL LEVELS OF RADON GAS EXPOSURE QUALIFY FOR MEDICAL CARE EXPENSE TAX DEDUCTION.

(a) FINDINGS.—The Congress finds that—

(1) indoor air contamination has become the focus of increasing concern among public health officials in the United States,

(2) the problem of harmful indoor radon gas contamination has been found in areas throughout the United States and has been estimated by the Federal Centers for disease control to be responsible for as many as 5,000 to 30,000 lung cancer deaths annually in the United States,

(3) mitigation of harmful indoor radon gas exposure is necessary to protect the health of residents,

(4) mitigation of harmful indoor radon gas exposure prevents increased risk of lung cancer, and

(5) mitigation of harmful indoor radon gas exposure can be costly, imposing excessive financial burdens on homeowners.

(b) HOME IMPROVEMENTS TO MITIGATE HARMFUL LEVELS OF RADON GAS EXPOSURE TREATED AS MEDICAL CARE EXPENSES.—For purposes of section 213(d)(1) of the Internal Revenue Code of 1954 (defining medical care) amounts paid for necessary home improvements to mitigate measured harmful levels of radon gas exposure shall be treated—

(1) as expenses paid for medical care, and

(2) in the same manner as amounts paid for other home improvements which qualify as expenses paid for medical care.

(c) EFFECTIVE DATE.—Subsection (b) shall apply to taxable years beginning after December 31, 1985.

METZENBAUM AMENDMENT NO. 2106

Mr. METZENBAUM proposed an amendment, which was subsequently modified, to the bill (H.R. 3838), supra; as follows:

Insert at the appropriate place in title XVII the following new section:

SEC. —. Sense of the Senate on Transition Rules.

It is vital for the Senate to be fully informed about every matter that comes before it, therefore it is the sense of the Senate that the Conference Report on H.R. 3838 shall contain—

"(1) the name of each business concern or group receiving a special or unique treatment in the bill;

"(2) the reason for the special or unique treatment; and

"(3) the cost of the special or unique treatment.".

DECONCINI AMENDMENT NO. 2107

Mr. DECONCINI proposed an amendment to the bill (H.R. 3838), supra; as follows:

On page 1371, strike out the matter between lines 10 and 11, and insert:

"If taxable income is	The tax is:
Not over $35,160	15% of taxable income.
Over $35,160	$5,274, plus 26% of the excess over $35,160.

On page 1371, strike out the matter between lines 14 and 15, and insert:

"If taxable income is	The tax is:
Not over $28,200	15% of taxable income.
Over $28,200	$4,230, plus 26% of the excess over $28,200.

On page 1372, strike out the matter preceding line 1, and insert:

"If taxable income is	The tax is:
Not over $21,120	15% of taxable income.
Over $21,120	$3,168, plus 26% of the excess over $21,120.

On page 1372, strike out the matter between lines 10 and 11, and insert:

"If taxable income is	The tax is:
Not over $17,580	15% of taxable income.
Over $17,580	$2,637, plus 26% of the excess over $17,580.

On page 1372, strike out the matter following lines 18, and insert:

"If taxable income is	The tax is:
Not over $6,000	15% of taxable income.
Over $6,000	$900, plus 26% of the excess over $6,000.

At the end of title IX, insert the following new section:

SEC. . REPEAL OF FOREIGN TAX CREDIT AND FOREIGN INCOME DEFERRAL.

(a) REPEAL OF FOREIGN TAX CREDIT.—Subpart A of part III of subchapter N of chapter 1 (relating to foreign tax credit) is hereby repealed.

(b) REPEAL OF FOREIGN INCOME DEFERRAL OF CONTROLLED FOREIGN CORPORATIONS.—Section 952(a) (defining subpart F income) is amended to read as follows:

"(a) IN GENERAL.—For purposes of this subpart, term 'subpart F income' means, in the case of any controlled foreign corporation, any income of such corporation not described in subsection (b), reduced (under regulations) by any deductions (including taxes) properly allocable to such income."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

On page 1956, strike "20 percent" and insert "21.25 percent".

McCONNELL AMENDMENT NO. 2108

(Ordered to lie on the table.)

Mr. McCONNELL submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

At the appropriate place in title XVII insert the following new section:

SEC. . CERTAIN COSTS OF PRIVATE FOUNDATION IN REMOVING HAZARDOUS SUBSTANCES TREATED AS QUALIFYING DISTRIBUTIONS.

(a) IN GENERAL.—In the case of any taxable year beginning after December 31, 1982, the distributable amount of a private foundation for such taxable year for purposes of section 4942 of the Internal Revenue Code of 1954 shall be reduced by any amount paid or incurred (or set aside) by such private foundation for the investigatory costs and direct costs of removal or taking remedial action with respect to a hazardous substance released at a facility which was owned or operated by such private foundation.

(b) LIMITATIONS.—Subsection (a) shall apply only to costs—

(1) incurred with respect to hazardous substances disposed of at a facility owned or operated by the private foundation but only if—

(A) such facility was transferred to such foundation by bequest before December 11, 1980, and

(B) the active operation of such facility by such foundation was terminated before December 12, 1980, and

(2) which were not incurred pursuant to a pending order issued to the private foundation unilaterally by the President or the President's assignee under section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, or pursuant to a judgment against the private foundation issued in a governmental cost recovery action under section 107 of such Act.

(c) HAZARDOUS SUBSTANCES.—For purposes of this section, the term "hazardous substance" has the meaning given such term by section 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act.

McCLURE AMENDMENT NO. 2109

Mr. McCLURE (for himself, Mr. HECHT, Mr. SYMMS, and Mr. EXON) proposed an amendment to the bill (H.R. 3838), supra; as follows:

On page 2143, between lines 16 and 17, insert the following new section:

SEC. . ACQUISITION OF GOLD AND SILVER COINS BY INDIVIDUAL RETIREMENT ACCOUNTS

(a) IN GENERAL.—Section 408(m) (relating to investment in collectibles treated as distributions) is amended by adding at the end thereof the following new paragraph:

"(3) EXCEPTION FOR CERTAIN COINS.—In the case of an individual retirement account, paragraph (2) shall not apply to any gold coin described in paragraphs (7), (8), (9), or (10) of section 5112(a) of title 31 or any silver coin described in section 5112(e) of title 31)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to acquisitions after December 31, 1986.

McCONNELL AMENDMENT NO. 2110

(Ordered to lie on the table.)

Mr. McCONNELL submitted an amendment to be proposed by him to the bill (H.R. 3838), supra; as follows:

At the appropriate place in title XVII, insert the folowing new section:

SEC. . CERTAIN GAMBLING WINNINGS SUBJECT TO WITHHOLDING.

(a) IN GENERAL.—Sectin 3402(q) (relating to extension of withholding to certain gambling winnings) is amended by adding at the end thereof the following new paragraph:

"(8) WITHHOLDING ON PARIMUTUAL POOLS.—In the case of winnings from a wagering transaction described in paragraph (3)(C)(ii), paragraph (1) shall be applied by substituting '15 percent' for '20 percent'."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1986.

CHAFEE (AND OTHERS) AMENDMENT NO. 2111

Mr. CHAFEE (for himself, Mr. DODD, Mr. STAFFORD, and Mr. KERRY) proposed an amendment to the bill (H.R. 3838), supra; as follows:

At the end of subtitle B of title VII, insert the following new section:

SEC. . REDUCTION OR DENIAL OF CERTAIN TAX PREFERENCES FOR PROPERTY AND ACTIVITIES WITHIN UNITS OF THE COASTAL BARRIER RESOURCES SYSTEM.

(a) LIMITATION ON DEDUCTIONS.—

(1) IN GENERAL.—Part IX of the subchapter B of chapter 1 (relating to items not deductible) is amended by adding at the end thereof the following new section:

"SEC. 280J. EXPENDITURES WITHIN UNITS OF THE COASTAL BARRIER RESOURCES SYSTEM.

"(a) COMPUTATION OF DEPRECIATION AND AMORTIZATION DEDUCTIONS.—Any deduction allowable under this chapter for depreciation or amortization for amounts paid or incurred for property used predominantly within a unit of the Coastal Barrier Resources System shall be computed under the alternative system of depreciation under section 168(g).

"(b) CERTAIN DEDUCTIONS DISALLOWED.—None of the following deductions shall be allowed:

"(1) EXPENSING OF DEPRECIABLE ASSETS.—Any deduction allowable under section 179 for property used predominantly within a unit of the Coastal Barrier Resources System.

"(2) CASUALTY LOSSES.—Any deduction allowable under section 165 with respect to any casualty or disaster loss in connection with any property within a unit of the Coastal Barrier Resources System.

"(c) For purposes of this section, the term 'units of the Coastal Barrier Resources System' means those undeveloped coastal barriers located on the Atlantic and Gulf coasts of the United States that are identified and generally depicted on the maps that are entitled 'Coastal Barrier Resources System', numbered A01 through T12 (but excluding maps T02 and T03), and dated September 30, 1982 and the maps designated T02A and T03A, dated December 8, 1982 under the Coastal Barrier Resources Act of 1982, as amended (16 U.S.C. 3501 et seq.)."

(2) CONFORMING AMENDMENT.—The table of sections for part IX of subchapter B of chapter 1 is amended by adding after the item relating to section 280I the following new item:

"Sec. 280J. Expenditures within units of the Coastal Barrier Resources System."

(3) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in this paragraph, the amendments made by this subsection shall apply to amounts paid or incurred after December 31, 1986, in taxable years ending after such date.

(B) TRANSITION RULE.—The amendments made by this subsection shall not apply to property—

(i) the construction or reconstruction of which began before July 1, 1986, or

(ii) which was acquired pursuant to a binding contract between the taxpayer and an unrelated person which was in effect on July 1, 1986, and at all times thereafter.

(b) APPLICATION OF AT-RISK RULES.—

(1) IN GENERAL.—Section 465(c) (relating to activities to which at-risk limitations apply) is amended by adding at the end thereof the following new paragraph:

"(8) SPECIAL RULES FOR PROPERTY LOCATED, OR USED, IN A UNIT OF THE COASTAL BARRIER RESOURCES SYSTEM.—In the case of an area designated as a unit of the Coastal Barrier Resources System under section 280J(c)—

"(A) paragraph (3)(D) shall not apply to real property located within such unit,

"(B) for purposes of paragraphs (4) and (5), the term 'equipment leasing' shall not include the leasing of property to be predominantly used within such unit, and

"(C) for purposes of paragraph (7), the term 'excluded business' shall not include any activity which is conducted within such unit."

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to losses occurring after December 31, 1986.

(c) DENIAL OF TAX-EXEMPT STATUS FOR CERTAIN GOVERNMENTAL OBLIGATIONS.—

(1) IN GENERAL.—Section 103(b) (relating to industrial development bonds) is amended by adding at the end thereof the following new paragraph:

"(19) BONDS USED TO FINANCE FACILITIES IN A UNIT OF THE COASTAL BARRIER RESOURCES SYSTEM.—Paragraphs (4), (5), and (6) shall not apply to any obligation issued as part of an issue any portion of which is to be used for any facility located in a unit of the Coastal Barrier Resources System (within the meaning of section 280J(c))."

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by this subsection shall apply to obligations issued after December 31, 1986, unless issued pursuant to an inducement resolution adopted on or before July 1, 1986.

(B) EXCEPTIONS.—The amendment made by this subsection shall not apply to obligations issued for any of the following projects, but only if the obligations issued therefor are consistent with the purposes of the Coastal Barrier Resources Act of 1982 (16 U.S.C. 3501 note):

(i) the establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

(ii) the maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly-owned or publicly-operated roads, structures, or facilities.

(iii) nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

HARKIN (AND OTHERS) AMENDMENT NO. 2112

Mr. HARKIN (for himself, Mr. ANDREWS, Mr. MELCHER, and Mr. PRESSLER) proposed an amendment to the bill (H.R. 3838), supra, as follows:

At the end of subtitle A of title VII, insert the following new section:

SEC. . INDEXING OF BASIS OF TRADE OR BUSINESS PROPERTY SOLD BY INDIVIDUALS AGE 55 AND OVER.

(a) IN GENERAL.—Part IV of subchapter O of chapter 1 (relating to special rules for determining basis) is amended by redesignating section 1060 as section 1061 and by inserting after section 1059 the following new section:

"SEC. 1060. BASIS OF TRADE OF BUSINESS PROPERTY SOLD BY INDIVIDUALS AGE 55 AND OVER.

"(a) GENERAL RULE.—If an individual has attained age 55 before the sale or disposition of any qualified trade or business property, the basis of such property solely for purposes of determining gain (but not loss) from such sale or disposition shall be increased by an amount equal to the product of—

"(1) the portion of the adjusted basis of such property (determined without regard to this section) which bears the same ratio to such adjusted basis as—

"(A) $500,000, bears to

"(B) the total sales price of such property, multiplied by

"(2) the inflation adjustment.

"(b) REDUCTION IN $500,000 LIMIT.—The $500,000 amount in subsection (a)(1)(A) shall be reduced (but not below zero) by the amount by which the total sales price, when added to the aggregate sales price of all qualified trade or business property previously sold or disposed of during the taxable year, exceeds $1,000,000.

"(c) QUALIFIED TRADE OR BUSINESS PROPERTY.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified trade or business property' means any real property located in the United States—

"(A) which on the date of the sale or disposition was owned by the taxpayer and was being used for a qualified use by the taxpayer or a member of the taxpayer's family, and

"(B) during the 13-year period ending on the date of the sale or disposition there have been periods aggregating 10 years or more during which—

"(i) such property was owned by the taxpayer and used for a qualified use by the taxpayer or a member of the taxpayer's family, and

"(ii) there was material participation by the taxpayer or a member of the taxpayer's family in the operation of the farm or other trade or business.

"(2) QUALIFIED USE.—The term 'qualified use' has the meaning given such term by section 2032A(b)(2).

"(3) MATERIAL PARTICIPATION.—The term 'material participation' has the meaning given such term by section 469(d)(2), except that a taxpayer shall not be treated as materially participating in the operation of a farm or other trade or business to the extent the taxpayer participates in the operation of the farm or other trade or business through an agent.

"(d) INFLATION ADJUSTMENT.—For purposes of this section, the inflation adjustment with respect to any sale or disposition of any property in any calendar year is the percentage (if any) by which—

"(1) the CPI for the preceding calendar year, exceeds

"(2) the CPI for the calendar year in which the holding period of the taxpayer with respect to such property begins.

For purposes of this subsection, the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-

month period ending on September 30 of such calendar year."

(b) REDUCTION IN AMOUNT TO WHICH SECTION 2032A APPLIES.—Section 2032A(a) (relating to valuation of certain farm, etc., real property) is amended by adding at the end thereof the following new paragraph:

"(3) REDUCTION FOR BASIS ADJUSTMENT.—The applicable limit under paragraph (2) shall be decreased by the aggregate amount of increases in the decedent's basis in property under section 1060 in connection with the disposition by the decedent of qualified trade or business property (within the meaning of section 1060(c))."

(C) CONFORMING AMENDMENT.—The table of sections for part IV of subchapter O of chapter 1 is amended by striking out the item relating to section 1060 and inserting in lieu thereof the following new items:

"Sec. 1060. Basis of trade or business property sold by individuals age 55 and over.

"Sec. 1061. Cross references."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or dispositions after December 31, 1986, in taxable years ending after such date.

At the end of subtitle D of title VI of the Committee amendment, insert the following:

SEC. . IMPOSITION OF MERGER TAX.

(a) IN GENERAL.—Chapter 36 (relating to certain other excise taxes) is amended by inserting at the end thereof the following new subchapter:

"SUBCHAPTER G—ACQUISITIONS TAX

"Sec. 4499. Imposition of tax.

"Sec. 4499A. Acquisitions to which subchapter applies; controlling interest.

"Sec. 4499B. Definitions and special rules.

"SEC. 4499. IMPOSITION OF TAX.

"(a) TAX IMPOSED.—If, during any 18-month period, a controlling interest in any entity (or portion thereof) is acquired in an acquisition to which this subchapter applies, an excise tax is hereby imposed on such acquisition.

"(b) RATE OF TAX.—The rate of the tax imposed by subsection (a) shall be 1.1 percent of the value of the consideration furnished by the acquiring entity in connection with the acquisition.

"(c) TAX PAID BY ACQUIRING ENTITY.—The tax imposed by subsection (a) shall be paid by the acquiring entity.

"SEC. 4499A. ACQUISITION TO WHICH SUBCHAPTER APPLIES; CONTROLLING INTEREST.

"(a) ACQUISITION TO WHICH SUBCHAPTER APPLIES.—This subchapter shall apply to any acquisition in which the acquired entity, as of the time of the acquisition, has assets with a value of at least $250,000,000.

"(b) CONTROLLING INTEREST.—For purposes of section 4499, the term 'controlling interest' means the acquisition of—

"(1) at least 50 percent of the voting stock of the acquired entity,

"(2) voting stock of the acquired entity—

"(A) having a value at the time of acquisition of not less than $125,000,000, and

"(B) representing at such time at least 35 percent of the voting stock of the acquired entity, or

"(3) in the case of an acquisition of assets, assets having a value at the time of acquisition of not less than $125,000,000.

In the case of entities other than corporations, rules similar to the rule of paragraphs (1) and (2) shall apply under regulations prescribed by the Secretary.

"SEC. 4499B. DEFINITIONS AND SPECIAL RULES.

"(a) ACQUISITIONS WHERE ACQUIRED ENTITY HAS SUBSTANTIAL NET OPERATING LOSSES.—The tax imposed by this subchapter shall not apply to the acquisition of any entity if such entity incurred—

"(1) a net operating loss (within the meaning of section 172(c)) for the taxable year preceding the taxable year in which the acquisition occurs equal to at least 3 percent of the value of such entity's assets as of the close of such preceding taxable year, or

"(2) an aggregate net operating loss for the 4 taxable years preceding the taxable year in which the acquisition occurs equal to at least 10 percent of the value of such entity's assets as of the close of the taxable year preceding the taxable year in which the acquisition occurs.

For purposes of this section, the net operating losses of any related group of which the acquired entity is a member shall be treated as net operating losses of such entity.

"(b) ENTITY.—For purposes of this subchapter, the term 'entity' includes corporations, partnerships, trusts, and individuals."

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 36 is amended by inserting after the item relating to subchapter F the following new items:

"SUBCHAPTER G. ACQUISITIONS TAX."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

McCONNELL AMENDMENT NO. 2113

(Ordered to lie on the table.)

Mr. McCONNELL submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

At the appropriate place in title XVII, insert the following new section:

SEC. . CERTAIN GAMBLING WINNINGS SUBJECT TO WITHHOLDING.

(a) IN GENERAL.—Paragraph (1) of section 3402(q) (relating to extension of withholding to certain gambling winnings) is amended by inserting "(15 percent in the case of winnings described in subparagraphs (B) and (C)(ii) of paragraph (3))" after "20 percent".

(b) WINNINGS SUBJECT TO WITHHOLDING.—Paragraph (3) of section 3402(q) is amended by striking out "$5,000" in subparagraph (B) and inserting in lieu thereof "$2,500".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1986.

RIEGLE AMENDMENT NO. 2114

Mr. RIEGLE proposed an amendment to the bill (H.R. 3838), supra; as follows:

At the appropriate place add the following:

It is the sense of the Senate that the Senate conferees on the Tax Reform Act of 1986 give the highest priority to increasing the tax cut for all middle income Americans.

ZORINSKY AMENDMENT NO. 2115

(Ordered to lie on the table.)

Mr. ZORINSKY submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

On page 1918, after line 20, insert the following:

SEC. 990. EQUITABLE TREATMENT OF CERTAIN FOREIGN EXPROPRIATION LOSSES.

(a) IN GENERAL.—In the case of a seizure of the assets of a corporation in December 1985 pursuant to Peruvian Presidential Decree No. 035-85-EM—

(1) for purposes of section 165 of the Internal Revenue Code of 1954, any loss shall be considered to have been sustained during the taxable year including December 1985,

(2) notwithstanding subsection (b) of section 165 of such Code, the basis for determining the amount of the deduction for any loss under subsection (a) of such section shall be equal to the amount of the net loss from the seizure as described in the parent corporation's Form 10-K filed with the Securities and Exchange Commission for calendar year 1985 increased by the estimated recoveries by insurance or otherwise, and

(3) to the extent that the parent corporation recovers from insurance or otherwise an amount in excess of such estimated recoveries, the amount equal to such excess shall be taxable at the rates in effect in calendar year 1985.

(b) INCREASE IN CIVIL FRAUD PENALTY FOR UNDERPAYMENTS OF TAX.—Paragraph (1) of section 6653(b) (relating to fraud), as amended by section 503(a) of this Act, is amended—

(1) by striking out "75 percent" in subparagraph (A) and inserting in lieu thereof "85 percent", and

(2) by striking out "50 percent" in subparagraph (B) and inserting in lieu thereof "60 percent".

D'AMATO AMENDMENT NOS. 2116 AND 2117

(Ordered to lie on the table.)

Mr. D'AMATO submitted two amendments intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

AMENDMENT NO. 2116

On page 1523, between lines 11 and 12, insert the following new paragraph:

(29) CERTAIN PROJECT CONSISTING OF A SPORTS AND ENTERTAINMENT FACILITY AND MULTI-USE DEVELOPMENT.—The amendments made by section 201, and subsection (c) of this section, shall not apply to any property which is part of project consisting of a sports and entertainment facility and a mixed-use development if either—

(A) the sports and entertainment facility—

(i) is to be used by both a National Hockey League team and a National Basketball Association team,

(ii) is to be constructed on a platform utilizing air rights over land acquired by a State authority and identified as Site B in a report dated May 30, 1984, prepared for a State urban development corporation, and

(iii) is eligible for real property tax, and power and energy benefits pursuant to the provisions of State legislation approved and effective on July 7, 1982; or

(B) the mixed-use development—

(i) is to be constructed above a public railroad station utilized by the national railroad passenger corporation and commuter railroads serving two States, and

(ii) will include the reconstruction of such station to make it a more efficient transportation center and to better integrate the station with the development above, in accord-

ance with reconstruction plans prepared in cooperation with a State transportation authority.

AMENDMENT No. 2117

On page 2847, strike "Act" and insert "Act.

Nowithstanding any other provision of this Act—

(1)(A) Sections 1201 and 1202 of the Act are null and void.

(B)(i) Part I of subchapter A of chapter 1 (relating to tax imposed on individuals) is amended by adding after section 3 the following new section:

"SEC. 4. INCREASE IN TAX TO REFLECT LIMITATION ON DEDUCTIBILITY OF INDIVIDUAL RETIREMENT CONTRIBUTIONS.

"(a) GENERAL RULE.—The amount of the tax imposed by section 1 (determined without regard to this section) shall be increased by the amount determined under subsection (1).

"(b) AMOUNT OF INCREASE.—The amount determind under this subsection is equal to—

"(1) the excess of—

"(A) the tax liability of the taxpayer for the taxable year computer without regard to the deduction allowable under section 219, over

"(B) such tax liability computed with regard to such deduction, reduced by

"(2) 15 percent of the amount of the deduction allowable under sector 219.

"(C) DEFINITION AND SPECIAL RULES.—For purposes of this section—

"(1) CONTRIBUTIONS TO SECTION 501 (c) (18) plans.—The amount of any deduction allowable under section 219 shall not take into account the portion of such deduction attributable to a qualified retirement contribution described in sector 219(e)(2) (relating to contributions to section 501(c)(18) plans).

"(2) TAX LIABILITY.—The term 'tax liability' has the meaning given such term by section 26(b)."

(ii) The table of sections for part I of subsection A of chapter 1 is amended by adding after section 3 the following new section:

"Sec. 4. Increase in tax to reflect limitation on deductibility of individual retirement contributions."

(iii) The amendment made by this subparagraph shall apply to taxable years beginning on or after January 1, 1987.

(2)(A) Section 1222(c)(1) of the Act is null and void.

(B) Sector 72(b), as amended by section 1222(c)(2) of the Act, is amended by adding at the end thereof the following new paragraph:

"(5) APPLICATION WITH SUBSECTION (D).—This subsection shall not apply to any amount to which subsection (d)(1) (relating to certain employee annuities) applies."

(C) Section 72(e)(8)(D), as added by section 1222(c)(3)(A), is amended by striking out "In the case of a plan which on May 5, 1986 separation withdrawal of employee contributions before separation from service, subparagraph" and insert "Subparagraph".

(3) Section 55(b)(1)(A) (defining tentative mining tax), as amended by section 1101(a), is amended by striking out "20 percent" and inserting in lieu thereof "23.1 percent".

EVANS AMENDMENT NOS. 2118 AND 2119

Mr. EVANS proposed two amendments to the bill (H.R. 3838), supra; as follows:

AMENDMENT No. 2118

At the appropriate place, insert the following new section:

SEC. . QUALITY CONTROL STUDIES.

"Section 12301 of the Consolidated Omnibus Reconciliation Act of 1985 is amended—

(1) in subsection (a)(3), by striking out "of enactment of this Act" and inserting in lieu thereof "the Secretary and the National Academy of Sciences enter into the contract required under paragraph (2)";

(2) in subsection (c)(1), by striking out "18 months after the date of enactment of this Act" and inserting in lieu thereof "6 months after the date on which the results of both studies required under subsection (a)(3) have been reported"."

AMENDMENT No. 2119

On page 2584, line 16, strike out the words "IN GENERAL." and insert in lieu thereof "IN GENERAL. (i)"

On page 2584, after line 20 insert the following:

"(ii) Clause (ii) of section 4064(b)(1)(A) (defining passenger automobile) is amended by striking out "gross vehicle weight" and inserting in lieu thereof "unloaded gross vehicle weight." "

"(iii) Section 4064(b)(5) is amended to provide that the definition of "manufacture" shall not include any "small manufacturer" as defined in section 4064(d)(4) who becomes a manufacturer solely by reason of lengthening any existing automobile."

"(C) The amendments made by clauses (ii) and (iii) of Subparagraph (A) shall apply only to automobiles manufactured after October 31, 1985."

BAUCUS (AND OTHERS) AMENDMENT NO. 2120

Mr. BAUCUS (for himself, Mr. ABDNOR, Mr. GRASSLEY, Mr. ZORINSKY, Mr. HARKIN, Mr. MELCHER, Mr. DOLE, Mr. SYMMS, Mr. HEFLIN, Mr. PRYOR, Mr. BENTSEN, and Mr. DURENBERGER) proposed an amendment to the bill (H.R. 3838), supra; as follows:

AMENDMENT No. 2120

At the end of title II, insert the following new section:

SEC. 213. EFFECTIVE 15-YEAR CARRYBACK OF EXISTING CARRYFORWARDS OF QUALIFIED FARMERS.

(a) GENERAL RULE.—If a taxpayer who is a qualified farmer makes an election under this section for its 1st taxable year beginning after December 31, 1986, with respect to any portion of its existing carryforwards, the amount determined under subsection (b) shall be treated as a payment against the tax imposed by chapter 1 of the Internal Revenue Code of 1954 made by such taxpayer on the last day prescribed by law (without regard to extensions) for filing its return of tax under chapter 1 of such Code for such 1st taxable year.

(b) AMOUNT.—For purposes of the subsection (a), the amount determined under this subsection shall be equal to the smallest of—

(1) 50 percent of the portion of the taxpayer's existing carryforwards to which the election under subsection (a) applies,

(2) the taxpayer's net tax liability for the carryback period (within the meaning of section 212(d) of this Act), or

(3) $750.

(c) NO RECOMPUTATION OF MINIMUM TAX, ETC.—Nothing in this section shall be construed to affect—

(1) the amount of the tax imposed by section 56 of the Internal Revenue Code of 1954, or

(2) the amount of any credit allowable under such Code,

for any taxable year in the carryback period.

(d) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

(1) QUALIFIED FARMER.—The term "qualified farmer" means any taxpayer who, during the 3-taxable year period preceding the taxable year for which an election is made under subsection (a), derived 50 percent or more of the taxpayer's gross income from the trade or business of farming.

(2) EXISTING CARRYFORWARD.—The term "existing carryforward" means the aggregate of the amounts which—

(A) are unused business credit carryforwards to the taxpayer's 1st taxable year beginning after December 31, 1986 (determined without record to the limitations of section 38(c) of the Internal Revenue Code of 1954), and

(B) are attributable to the amount of the investment credit determined under section 46(a) (as any corresponding provision of prior law) with respect to section 32 property which was used by the taxpayer in the trade or business of farming.

(2) FARMING.—The term "farming" has the meaning given such term by section 20321(a) (4) and (5) of such Code.

(4) TENTATIVE REFUND.—A rule similar to the rule of section 212(h) of this Act shall apply.

(e) RESTRICTION ON ACQUISITION OF CERTAIN LAND NOT TO APPLY TO QUALIFIED REDEVELOPMENT LANDS.—Section 103(b)(5)(f), as added by section 1501(c) of this Act, is amended by striking out "Paragraph (16)" and inserting in lieu thereof "Paragraph (16)(A)(ii)".

METZENBAUM (AND CHAFEE) AMENDMENT NO. 2121

Mr. METZENBAUM (for himself and Mr. CHAFEE) proposed an amendment to the bill (H.R. 3838), supra; as follows:

On page 2432, beginning with line 15, strike all through page 2433, line 12, and insert:

With respect to an interest in property created by a gift, devise, or bequest made before November 15, 1958, a disclaimer by a person of such interest (in whole or in part) shall not be treated as a transfer for purposes of chapters 11 and 12 of subtitle B of the Internal Revenue Code of 1954 if such disclaimer satisfied the requirements set forth in Treasury Regulation Section 25.2511-1(c) as in effect at the time the disclaimer was made. For purposes of this section, the requirement of such regulation that the disclaimer be made within a reasonable time after knowledge of the existence of the transfer shall be satisfied if such disclaimer was made in writing before December 9, 1980, and no later than a reasonable time after termination of all interests in such property prior to the disclaimed interest.

MATSUNAGA (AND OTHERS) AMENDMENT NO. 2122

Mr. MATSUNAGA (for himself, Mr. INOUYE, Mr. CRANSTON, Mr. WILSON, and Mr. SYMMS) proposed an amendment to the bill (H.R. 3838), supra; as follows:

On page 1955, between lines 3 and 4, insert the following:

Subtitle D—Miscellaneous Provisions

SEC. 1031. PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS.

(a) IN GENERAL.—Section 821 (relating to mutual insurance companies), as amended by section 1024(c)(2), is amended by redesignating subection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) CERTAIN PHYSICIANS' AND SURGEONS' MUTUAL PROTECTION AND INTERINDEMNITY ARRANGEMENTS OR ASSOCIATIONS.—

"(1) TREATMENT OF ARRANGEMENTS OR ASSOCIATIONS.—

"(A) CAPITAL CONTRIBUTIONS.—There shall not be included in the gross income of any eligible physicians' and surgeons' mutual protection and interindemnity arrangement or association any initial payment made during any taxable year to such arrangement or association by a member joining such arrangement or association which—

"(i) does not release such member from obligations to pay current or future dues, assessments, or premiums; and

"(ii) is a condition precedent to receiving benefits of membership.

Such initial payment shall be included in gross income for such taxable year with respect to any member of such arrangement or association who deducts such payment pursuant to paragraph (2).

"(B) RETURN OF CONTRIBUTIONS.—

"(i) IN GENERAL.—The repayment to any member of any amount of any payment excluded under subparagraph (A) shall not be treated as policyholder dividend, and is not deductible by the arrangement or association.

"(ii) SOURCE OF RETURNS.—Except in the case of the termination of a member's interest in the arrangement or association, any amount distributed to any member shall be treated as paid out of surplus in excess of amounts excluded under subparagraph (A).

"(2) DEDUCTION FOR MEMBERS OF ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—

"(A) PAYMENT AS TRADE OR BUSINESS EXPENSES.—To the extent not otherwise allowable under this title, any member of any eligible arrangement or association may treat any initial payment made during a taxable year to such arrangement or association as an ordinary and necessary expense incurred in connection with a trade or business for purposes of the deduction allowable under section 162, to the extent such payment does not exceed the amount which would be payable to an independent insurance company for similar annual insurance coverage (as determined by the Secretary), and further reduced by any annual dues, assessments, or premiums paid during such taxable year. Such deduction shall not be allowable as to any initial payment made to an eligible arrangement or association by any person who is a member of any other eligible arrangement or association on or after the effective date of the Tax Reform Act of 1986. Any excess amount not allowed as a deduction for the taxable year in which such payment was made pursuant to the limitation contained in the first sentence of this subparagraph shall, subject to such limitation, be allowable as a deduction in any of the 5 succeeding taxable years, in order of time, to the extent not previously allowed as a deduction under this sentence.

"(B) REFUNDS OF INITIAL PAYMENTS.—Any amount attributable to any initial payment to such arrangement or association described in paragraph (1) which is later refunded for any reason shall be included in the gross income of the recipient in the taxable year received, to the extent a deduction for such payment was allowed. Any amount refunded in excess of such payment shall be included in gross income except to the extent otherwise excluded from income by this title.

"(3) ELIGIBLE ARRANGEMENTS OR ASSOCIATIONS.—The terms 'eligible physicians' and surgeons' mutual protection and interindemnity arrangement or association' and 'eligible arrangement or association' mean and are limited to any mutual protection and interindemnity arrangement or association that provides only medical malpractice liability protection for its members or medical malpractice liability protection in conjunction with protection against other liability claims incurred in the course of, or related to, the professional practice of a physician or surgeon and which—

"(A) was operative and was providing such protection, or had received a permit for the offer and sale of memberships, under the laws of any state prior to January 1, 1984,

"(B) is not subject to regulation by any State insurance department,

"(C) has a right to make unlimited assessments against all members to cover current claims and losses, and

"(D) is not a member of, nor subject to protection by, any insurance guaranty plan or association of any State."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made to and receipts of physicians' and surgeons' mutual protection and interindemnity arrangements or associations, and refunds of payments by such arrangements or associations, after the date of the enactment of this Act, in taxable years ending after such date.

STEVENS (AND OTHERS) AMENDMENT NO. 2123

Mr. STEVENS (for himself Mr. DIXON, Mr. SIMON, and Mr. MURKOWSKI) proposed an amendment to the bill (H.R. 3838), supra; as follows:

On page 1664, between lines 8 and 9, insert the following:

SUBTITLE II—CERTAIN DIESEL FUEL TAXES MAY BE IMPOSED ON SALES TO RETAILERS

SEC. 571. TAX ON SALES TO RETAILER.

(a) IN GENERAL.—Section 4041 (relating to imposition of tax on special fuels) is amended by adding at the end thereof the following new subsection:

"(n) TAX ON DIESEL FUEL FOR HIGHWAY VEHICLE USE MAY BE IMPOSED ON SALE TO RETAILER.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—The tax imposed by subsection (a)(1)—

"(A) shall apply to the sale of diesel fuel to a qualified retailer (and such sale shall be treated as described in subsection (a)(1)(A)), and

"(B) shall not apply to the sale of diesel fuel by such retailer if tax was imposed on such fuel under subparagraph (A).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED RETAILER.—The term 'qualified retailer' means any retailer—

"(1) who elects (under such terms and conditions as may be prescribed by the Secretary) to have paragraph (1) apply to all sales of diesel fuel to such retailer, and

"(11) who agrees to provide a written notice to each person who sells diesel fuel to such retailer that paragraph (1) applies to all sales of diesel fuel by such person to such retailer.

Such election and notice shall be effective for such period or periods as may be prescribed by the Secretary.

"(B) RETAILER.—The term 'retailer' means any person who sells diesel fuel for use as a fuel in a diesel-powered highway vehicle. Such term does not include any person who sells diesel fuel primarily for resale.

"(C) DIESEL FUEL.—

"(1) IN GENERAL.—The term 'diesel fuel' means any liquid on which tax would be imposed by subsection (a)(1) if sold to a person, and for a use, described in subsection (a)(1)(A).

"(11) EXCEPTION.—A liquid shall not be treated as diesel fuel for purposes of this subsection if the retailer certifies in willing to the seller of such liquid that such liquid will not be sold for use as a fuel in a dieselpowered highway vehicle.

"(3) FAILURE TO NOTIFY SELLER.—

"(A) IN GENERAL.—If a qualified retailer fails to provide the notice described in paragraph (2)(A)(ii) to any seller of diesel fuel to such retailer—

"(i) paragraph (1) shall not apply to sales of diesel fuel by such seller to such retailer during the period for which such failure continues, and

"(ii) any diesel fuel sold by such seller to such retailer during such perlod shall be treated as sold by such retailer (in a sale described in subsection (a)(1)(A)) on the date such fuel was sold to such retailer.

"(B) PENALTY.—For penalty for failing to notify seller, see section 6652(j).

"(4) EXEMPTIONS NOT TO APPLY.—

"(A) IN GENERAL.—No exemption from the tax imposed by subsection (a)(1) shall apply to a sale to which paragraph (1) or (3)(A) of this subsection applies.

"(B) CROSS REFERENCE.—

"For provisions allowing a credit or refund for certain sales and uses of fuel, see section 6416 and 6427."

(b) PENALTY.—Section 6652 (relating to failure to file certain information returns, registration statements, etc.), as amended by section 501, is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

"(j) FAILURE TO GIVE WRITTEN NOTICE TO CERTAIN SELLERS OF DIESEL FUEL.— "(1) IN GENERAL.—If any qualified retailer fails to provide the notice described in section 4041(n)(2)(A)(ii) to any seller of diesel fuel to such retailer, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by such retailer with respect to each sale of diesel fuel to such retailer by such seller to which section 4041(n)(3) applies an amount equal to 5 percent of the tax which would have been imposed by section 4041(n)(1) on such sale had section 4041(n)(1) applied to such sale.

"(2) DEFINITIONS.—For purposes of paragraph (1), the terms 'qualified retailer' and

'diesel fuel' have the respective meanings given such terms by section 4041(n)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after the first calendar quarter beginning more than 60 days after the date of the enactment of this Act.

At the appropriate place, add the following new section as follows:

"Section—Special ESOP Requirements

"(a) IN GENERAL.—Subsection (a) of Section 401(a)(29) of the Internal Revenue Code of 1954 (relating to qualified pension, profit sharing and stock bonus plans) is amended by inserting thereat the following new sentence; The requirements of subsection (e) of section 409 shall not apply to defined contribution plans established by an employer whose stock is not publicly traded and who publishes a newspaper."

(b) Section 409(1) of the Internal Revenue Code of 1954 is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) NONVOTING COMMON STOCK MAY BE ACQUIRED IN CERTAIN CASES.—Nonvoting common stock of an employee whose stock is not publicly-traded and who publishes shall be treated as employer securities if an employer has a class of nonvoting common stock outstanding and the specific shares that the plan acquires have been issued and outstanding for at least 24 months."

(c) EFFECTIVE DATES.—The amendment made by subsection (a) shall be effective December 31, 1986. The amendment made by subsection (b) shall apply to acquisitions of securities after December 31, 1986."

SASSER (AND OTHERS) AMENDMENT NO. 2124

Mr. SASSER (for himself, Mr. BUMPERS, Mr. HARKIN, Mr. ANDREWS, and Mr. GRASSLEY) proposed an amendment to the bill (H.R. 3838), supra; as follows:

At the appropriate place in title V insert the following new section:

SEC. . APPLICATION OF THE REGULATORY FLEXIBILITY ACT TO THE INTERNAL REVENUE SERVICE.

(a) IN GENERAL.—Section 7805 of the Internal Revenue Code of 1954 (relating to rules and regulations) is amended by adding at the end thereof the following new subsection:

"(e) RULE MAKING.—The provisions of section 553 of title 5, United States Code (without regard to the exception for interpretative rules) shall apply to all rules and regulations prescribed by the Secretary under this section or any other provision of this title."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to any rule or regulation prescribed after the date of the enactment of this Act.

ABDNOR AMENDMENT NO. 2125

(Ordered to lie on the table.)

Mr. ABDNOR submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

On page 1514, line 9, strike out "or".

On page 1514, line 17, strike out the period, and insert in lieu thereof a comma and "or".

On page 1514, between lines 17 and 18, insert the following new subparagraph:

(D) the airline signed an aircraft purchase agreement on January 20, 1986, for 7 aircraft, with the financing contingency removed no later than February 7, 1986, the estimated cost of each aircraft is $2,900,000, and all 7 of the aircraft were delivered before May 23, 1986, and were placed in service by May 27, 1986.

On page 1416, between lines 4 and 5, insert:

SEC. 136. REPEAL OF TAXES OF SHAREHOLDER PAID BY CORPORATION.

Section 104(e) (relating to taxes of shareholder paid by corporation) is amended to read as follows:

"(e) TAXES OF SHAREHOLDERS PAID BY CORPORATION.—If a corporation pays a tax imposed on a shareholder on his interest as a shareholder, and if the shareholder does not reimburse the corporation, then no deduction shall be allowed with respect to such tax to the corporation or to the shareholder."

CRANSTON AMENDMENT NO. 2126

(Ordered to lie on the table.)

Mr. CRANSTON submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

At the appropriate place in the bill insert the following:

SEC. . TREATMENT OF COMPUTER SOFTWARE ROYALTIES FOR PURPOSES OF SUBCHAPTER S.

Paragraph (d)(3)(D) of section 1302 of the Internal Revenue Code of 1954, as amended (defining passive investment income) is amended—

(1) by striking out "and" at the end of subparagraph (D)(iv);

(2) by striking out the period at the end of subparagraph (D)(v) and inserting in lieu thereof ", and"; and

(3) by adding at the end thereof the following new subparagraph (D)(vi) to read as follows:

"(vi) Exception for active business computer software royalties are defined by section 543(d). The term 'passive investment income' shall not include royalties as defined by section 543(d)(1) through (4).".

CRANSTON AMENDMENT NO. 2127

(Ordered to lie on the table.)

Mr. CRANSTON submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

At the appropriate place in the amendment, add the following new section:

"SEC. . NON-PRO RATA STOCK SURRENDERS.

"(a) GENERAL RULE.—Section 165 (relating to deductibility of losses) is amended by redesignating subsection (l) as subsection (m) and inserting in lieu thereof the following new subsection (l):

"'(l) TREATMENT OF CERTAIN STOCK SURRENDERS.—Where a taxpayer transfers less than all of the taxpayer's stock in a corporation directly to that corporation as a surrender of shares—

"'(1) No loss shall be allowed at the time of the surrender;

"'(2) The transfer shall be treated as a contribution to the capital of the corporation; and

"'(3) The taxpayer's basis in the surrendered shares shall be added to the taxpayer's basis in the shares of the corporation held by the taxpayer immediately after the transfer.'

"(b) TECHNICAL AMENDMENT.—Subsection (e) of Section 1016 (relating to adjustments to basis) is amended by adding the following at the end thereof—

"'(3) For treatment of certain surrenders of stock, see section 165(l).'

"(c) EFFECTIVE DATES.

"(1) Subject to the provision of paragraph (2), the amendments made by this section shall be effective with respect to transfers occurring after the date of enactment.

"(2) In the case of a surrender of stock with respect to which—

"(A) the surrendering stockholder's interest in the voting stock of the corporation immediately after the surrender was at least five percent less than the stockholder's interest immediately prior to the surrender:

"(B) the surrendering stockholder suffered an economic loss as a result of the surrender; and

"(C) the surrender took place before August 28, 1979

the surrendering stockholder shall be entitled to claim a loss under section 165(c)(2) measured by reference to the stockholder's basis in the surrendered shares.".

HEINZ AMENDMENT NO. 2128

(Ordered to lie on the table.)

Mr. HEINZ submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

On page 1432, strike lines 6 through 9, and insert:

"(2) 5-YEAR AND 10-YEAR PROPERTY.—Except as provided in paragraph (3), in the case of 5-year and 10-year property, the applicable depreciation method is—

"(A) the 200 percent declining balance method,

"(B) switching to the straight line method—

"(i) in the case of 5-year property, in the 2nd taxable year following the taxable year in which the property was placed in service, and

"(ii) in the case of 10-year property, in the 5th taxable year following the taxable year in which the property was placed in service.

On page 1958, line 21, strike the end period and insert ", except that the recovery period under section 168(g)(2)(C), shall be applicable recovery period under section 168(c).

MATSUNAGA AMENDMENT NO. 2129

Mr. MATSUNAGA proposed an amendment to the bill (H.R. 3838), supra; as follows:

At the end of title XVII, insert the following:

SEC. . SPECIAL RULE FOR EDUCATIONAL ACTIVITIES AT CONVENTION AND TRADE SHOWS.

(a) CERTAIN EDUCATIONAL ACTIVITIES TREATED AS CONVENTION AND TRADE SHOW ACTIVITIES.—Section 513(d)(3)(B) (relating to qualified convention and trade show activity) is amended by inserting after "industry in general" the following: "or to educate persons in attendance regarding new developments or products and services related to the exempt activities of the organization".

(b) QUALIFYING ORGANIZATIONS.—Section 513(d)(3)(c) (relating to qualifying organization) is amended by striking out "501(c) (5) or (6)" and inserting in lieu thereof "501(c)(3), (4), (5), or (6)" and by inserting before the period at the end thereof the following: "or which educates persons in attendance regarding new developments or products and services related to the exempt activities of the organization".

(c) EFFECTIVE DATE.—The amendments made by this Act shall apply to activities in taxable years beginning after the date of enactment of this Act.

ROTH (AND OTHERS) AMENDMENT NO. 2130

(Ordered to lie on the table.)

Mr. ROTH (for himself, Mr. SYMMS, and Mr. CHAFEE) submitted an amendment intended to be proposed by them to the bill (H.R. 3838), supra; as follows:

On page 1725, beginning with line 4, strike out all through page 1727, line 8.

On page 1903, lines 5 and 6, strike "December 31, 1986" and insert "November 1, 1986".

HATCH (AND OTHERS) AMENDMENT NO. 2131

Mr. HATCH (for himself, Mr. KENNEDY, and Mr. METZENBAUM) proposed an amendment to the bill (H.R. 3838), supra; as follows:

On page 2032, line 14, insert "or section 204(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g))" after "1954".

On page 2073, between lines 17 and 18, insert the following new subsection:

(d) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Paragraph (2) of section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to read as follows:

"(2) A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

"(A) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

"(B) A plan satisfies the requirements of this subparagraph if an employee who has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined, under the following table:

"Years of service:	*The nonforfeitable percentage is:*
3	20
4	40
5	60
6	80
7 or more	100.

"(C) A plan satisfies the requirements of this subparagraph if—

"(i) the plan is a multiemployer plan (within the meaning of section 414(f) of the Internal Revenue Code of 1954), and

"(ii) under the plan an employee who has completed at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.".

(2) REPEAL OF CLASS YEAR VESTING.—Subsection (c) of section 203 of such Act is amended by striking out paragraph (3).

(3) CONFORMING AMENDMENTS.—

(A) MINIMUM VESTING STANDARDS.—Section 203(c)(1)(B) of such Act is amended by striking out "5 years" and inserting in lieu thereof "3 years".

(B) BENEFIT ACCRUAL REQUIREMENTS.—Subsection (1) of section 204 of such Act (29 U.S.C. 1054(i)) is amended to read as follows:

"(i) CROSS REFERENCE.—

"For special rules relating to plan provisions adopted to preclude discrimination, see section 203(c)(2).".

On page 2073, line 18, strike out "(d)" and inset in lieu thereof "(e)".

On page 2141, between lines 9 and 10, insert the following new subsection:

(c) AMENDMENTS TO ERISA.—

(1) IN GENERAL.—Paragraph (2) of section 203(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(e)(2)) is amended to read as follows:

"(2)(A) For purposes of paragraph (1), the present value shall be calculated—

"(i) by using the applicable interest rate to the extent the accrued benefit (using such rate) is not in excess of $3,500, and

"(ii) by using 120 percent of the applicable interest rate with respect to any portion of the accrued benefit in excess of $3,500 (as determined under clause (i)).

"(B) For purposes of subparagraph (A), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.".

(2) CONFORMING AMENDMENT.—Paragraph (3) of section 205(g) of such Act (29 U.S.C. 1055(g)(3)) is amended to read as follows:

(3)(A) For purposes of paragraphs (1) and (2), the present value shall be calculated—

"(i) by using the applicable interest rate to the extent the accrued benefit (using such rate) is not in excess of $3,500, and

"(ii) by using 120 percent of the applicable interest rate with respect to any portion of the accrued benefit in excess of $3,500 (as determined under clause (i)).

"(B) For purposes of subparagraph (A), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.".

On page 2141, line 10, strike out "(c)" and insert in lieu thereof "(d)".

HUMPHREY AMENDMENT NO. 2132

Mr. HUMPHREY proposed an amendment to the bill (H.R. 3838), supra; as follows:

On page 1623, strike lines 18 through 23 and insert:

"(A) the title company,

"(B) the mortgage lender,

"(C) the settlement attorney or other person responsible for closing the transaction,

"(D) the seller's broker,

"(E) the buyer's broker, or

MATTINGLY AMENDMENT NO. 2133

(Ordered to lie on the table.)

Mr. MATTINGLY submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

Insert at the appropriate place in title XVII, the following new section:

SEC. . MORATORIUM ON TAX LEGISLATION.

(a) FINDINGS.—The Congress finds that—

(1) constant and conflicting policy changes in the Internal Revenue Code of 1954 (herinafter referred to as the "Tax Code") make it difficult for individuals to properly plan for the future,

(2) constant and conflicting policy changes by the Congress retard capital formation by increasing the risk of a project,

(3) constant and conflicting policy changes by the Congress place undue burdens on individuals and businesses by requiring utilization of financial resources to anticipate such changes and modifications in the Tax Code,

(4) the Internal Revenue Service is drained of limited resources in trying to adapt to changes in the Tax Code,

(5) one of the greatest burdens placed upon small businesses is the completion of paperwork to comply with the Tax Code, and constant changes by Congress unnecessarily compound this paperwork burden,

(6) any tax reform legislation passed by the Congress should stimulate economic growth, encourage investment, promote capital formation, expand job opportunities, and encourage savings, and

(7) the American taxpayer deserves certainty in the tax treatment of economic decisions.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the provisions of the Internal Revenue Code of 1954 which are added or amended by this Act remain unchanged for at least 5 years in order to provide stability for the American taxpayer and the private sector.

BRADLEY AMENDMENT NO. 2134

Mr. BRADLEY proposed an amendment to the bill (H.R. 3838), supra; as follows:

On page 1401, between lines 13 and 14, insert the following:

(e) EMPLOYEE NOTIFICATION.—The Secretary of the Treasury is directed to require, under regulations, employers to notify any employee who has not had any tax withheld from wages that such employee may be eligible for a refund because of the earned income credit.

LONG AMENDMENT NO. 2135

(Ordered to lie on the table.)

Mr. LONG submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

On page 2610, between lines 17 and 18, add the following new paragraph:

(4) Section 7702(e)(2) is amended—

(A) by striking out "and" at the end of subparagraphs (A),

(B) by striking out the period at the end of subparagraph (B), and inserting in lieu thereof a comma and "and", and

(C) by adding at the end thereof the following new subparagraph:

"(C) for purposes of the cash value accumulation test, the death benefit increases may be taken into account if the contract—

"(i) has an initial benefit of $5,000 or less,

"(ii) provides for a fixed predetermined annual increase not to exceed 10 percent of the initial death benefit or 8 percent of the death benefit at the end of the preceding year, and

"(iii) was purchased to cover payment of burial expenses or in connection with prearranged funeral expenses.

For purposes of subparagraph (C), the initial death benefit of a contract shall be determined by treating all contracts issued to the same contract owner as 1 contract."

WILSON AMENDMENT NO. 2136

(Ordered to lie on the table.)

Mr. WILSON submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

On page 1413 of the amendment, strike out line 24 and insert in lieu thereof the following: "employer, and"

"(4) EXPENSES FOR OBTAINING TEMPORARY EMPLOYMENT.—The deductions allowed by part VI (sec. 161 and following) which consist of agency fees directly related to the seeking of employment of limited duration in the taxpayer's present trade or business, under regulations to be prescribed by the Secretary."

LEAHY AMENDMENT NO. 2137

(Ordered to lie on the table.)

Mr. LEAHY submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

At the appropriate place, insert the following:

Amend section 202(b)(2) by inserting after "Paragraph (1)" the following: "and subsection (d) (other than paragraphs (9) and (13) thereof)".

Amend section 202(d)(13) to read as follows: "(13) CERTAIN SATELLITES.—The amendments made by section 201 shall not apply to any satellite or other spacecraft with respect to which—

"(A) the taxpayer entered into written binding contracts with respect to 3 satellites before September 26, 1985, the third satellite is the subject of a joint venture, and the total cost of the 3 satellites is approximately $400,000,000, or

"(B) by an order adopted on July 25, 1985, the Federal Communications Commission granted the taxpayer an orbital slot and authorized the taxpayer to launch and operate 2 satellites with a cost of approximately $120,000,000, or

"(C) the International Telecommunications Satellite Organization or the International Maritime Satellite Organization entered into written binding contracts prior to May 1, 1985."

QUAYLE AMENDMENT NO. 2138

(Ordered to lie on the table.)

Mr. QUAYLE submitted an amendment intended to be proposed by him to the bill (H.R. 3838), supra; as follows:

At the end of subtitle H of title IX, insert the following new section:

SEC. . ATHLETES COMPETING IN CHARITABLE SPORTING EVENTS.

(a) IN GENERAL.—Section 7701(b)(4)(A) (defining exempt individual) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or" and by adding after clause (iii) the following new clause:

"(iv) a professional athlete who is temporarily in the United States to compete in a charitable sports event described in section 274(k)(2)."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to periods after the date of the enactment of this Act.

AUTHORITY FOR COMMITTEES TO MEET

SELECT COMMITTEE ON INTELLIGENCE

Mr. PACKWOOD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Thursday, June 19, in order to conduct a closed executive session, and to receive an intelligence briefing.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. PACKWOOD, Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, June 19, to hold an oversight hearing on the Chernobyl accident and implications for the domestic nuclear industry,

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICE

Mr. DURENBERGER, Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Thursday, June 19, in executive session, to markup the fiscal year 1987 Department of Defense, Military Construction, and Department of Energy National Security Programs Authorization bills,

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate on Thursday, June 19, 1986, in order to conduct a hearing on the Prompt Pay Act of 1982.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, June 19, to conduct a hearing on the nomination of Lawrence Gibbs to be Commissioner of the Internal Revenue Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. DOLE. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Thursday, June 19, in order to consider the nomination of Lawrence Gibbs to be Commissioner of the Internal Revenue Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

NATIONAL ICE CREAM MONTH

● Mr. KERRY. Mr. President, one of the most successful and enjoyable American products receives its due national recognition during the month of July. That's because we get to celebrate July as "National Ice Cream Month."

As an ice cream lover myself, I can attest to the fact that ice cream has achieved a status in the American consumers' minds unlike that of almost any other product. Many people consider it a reward food. Others think of it as a treat or a pleasurable indulgence. Some even think the cool and refreshing qualities of ice cream are good for coping with stress and anger.

Its richness and marvelously varied flavors and forms are a testament to American ingenuity. Over the past 10-15 years, the ice cream industry has witnessed a rebirth in its innovativeness as it seeks to meet the demand for quality products that American consumers have come to expect. This is one industry that's not endangered by foreign competition.

I am proud to point out that Massachusetts and the rest of the New England area have the singular distinction of being the highest per capita production area of ice cream products in the country. In 1984, that figure was 23 quarts per capita. Compare that to the national per capita production figure of 15 quarts and you can see which area of the country is helping provide a lot of ice cream for the American people. My home State of Massachusetts ranks sixth in the Nation in ice cream production. Massachusetts ice cream manufacturers produced nearly 47 million gallons of ice cream in 1984.

We salute the ice cream manufacturers in the United States for the delicious products they produce and all of us get to enjoy.●

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS

● Mr. RUDMAN. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The Select Committee has received a request for a determination under rule 35, for Mr. Alex Netchvolodoff, a member of the staff of Senator JOHN

C. DANFORTH, to participate in a program in the Federal Republic of Germany, sponsored by the Konrad-Adenauer-Stiftung, from June 21 to June 28, 1986.

The committee has determined that participation by Mr. Netchvolodoff in the program in the Federal Republic of Germany, at the expense of the Konrad-Adenauer-Stiftung, is in the interest of the Senate and the United States.

The Select Committee has received a request for a determination under rule 35, for Mr. M. Graeme Bannerman, a member of the Committee on Foreign Relations staff, to participate in a program in the People's Republic of China and Tibet, sponsored by the United States-China Friendship Program in conjunction with the United States-Asia Institute, from June 29 to July 17, 1986.

The committee has determined that participation by Mr. Bannerman in the program in the People's Republic of China and Tibet, at the expense of the United States-Asia Institute, is in the interest of the Senate and the United States.

The Select Committee has received a request for a determination under rule 35, for Ms. Annie Lesher, a member of the staff of Senator DAVID PRYOR, to participate in a program in Taipei, Taiwan, sponsored by Tamkang University, from July 1, to July 10, 1986.

The committee has determined that participation by Ms. Lesher in the program in the Republic of China, at the expense of Tamkang University, is in the interest of the Senate and the United States.●

U.S. SCIENTISTS ON STAR WARS

● Mr. JOHNSTON. Mr. President, in his now famous "Star Wars" speech of March 23, 1983, the President said:

I call upon the scientific community in our country, those who gave us nuclear weapons, to turn their great talents now to the cause of mankind and world peace to give us the means of rendering these nuclear weapons impotent and obsolete.

Recently, the scientific community has responded to the President's call. It has come as a crescendo of voices echoing across the country, united in their certainty that Star Wars cannot possibly make nuclear weapons "impotent and obsolete;" united in their skepticism, if not outright opposition to the Star Wars Program, and united in their belief that this dangerous, wasteful program should be cut back and converted into a true, exploratory research program.

A few days ago, my colleague, BILL PROXMIRE, circulated a list of 6,500 scientists and engineers at 110 colleges, universities, and other institutions in 41 States, who oppose SDI. The list includes 15 Nobel laureates and a majority of the faculty from the top 20 physicis departments in the Nation.

Today, Senator EVANS and I met in a press conference with a group of five distinguished scientists who transmitted to us an "Open Letter to Congress" signed by over 1,600 scientists expressing their serious concerns over the Star Wars Program. I especially want to thank the five scientists who came to deliver this open letter from their colleagues to the Congress. I also want to thank them for their efforts in educating legislators and the public on this critical issue.

I do not exaggerate at all in saying these five scientists constitute a national asset in and of themselves.

Carson Mark, Ph.D., was the theoretical division leader in charge of new weapons design from 1947-73 at Los Alamos Scientific Laboratory.

Robert W. Wilson, Ph.D. of AT&T Bell Labs received the Nobel Prize in physics for the discovery of the cosmic black body background radiation from the "Big Bang."

John Backus, MS, is an IBM Fellow and is the inventor of "Fortran," and recipient of the National Medal of Science from President Ford.

Daniel S. Fisher, also of AT&T Bell Labs, was chosen by Science Digest as one of the 100 brightest U.S. scientists under 40.

Pierre Hohenberg is the head of the Theoretical Physics Department at AT&T Bell Labs.

The 1,600 signatories on the open letter to Congress have a very special credibility on the subject of Star Wars. These are scientists from the major weapons laboratories and high technology centers across the Nation such as Los Alamos, Livermore, Lincoln Labs, Jet Propulsion Laboratory, Bell Labs, Sandia, Aragonne, Mitre, Ratheon, and Boeing. These are the same Government and industrial laboratories who have created the technology upon which our national defense depends. Many signatories are current or former directors in these labs.

It is fortunate, indeed, Mr. President, that these scientists have stepped forth. As a U.S. Senator, I do not think I am telling any closely held secrets when I say that the Star Wars program is a difficult subject matter for my colleagues and me. It is loaded with exotic technologies. The vocabulary is daunting enough—words like "smart rocks," "rubber mirrors," and "electromagnetic rail guns"—are mystifying for most Senators.

We have to look to the scientists in this country who work in exotic technologies for advice on quesitons such as:

Can Star Wars make nuclear weapons impotent and obsolete?

Will the system work reliably?

Can the Russians fool this proposed astrodome in space with decoys, punch holes in it or evade it with countermeasures?

What will Star Wars cost?

We must rely on our scientists for answers to these questions.

What these 1,600 laboratory scientists have to say about Star Wars is as important as their identity. I urge you to study their open letter which I am enclosing in the RECORD.

Note especially that they urge the Congress "to limit the SDI to a scale appropriate to exploratory research." They do not question the need for exploratory research.

I know the Senate is already listening to the scientific community. Forty-eight Senators have now signed a bipartisan letter that I originated with five of my colleagues: Senators PROXMIRE, CHILES, CHAFEE, EVANS, and MATHIAS questioning the need for any further explosive growth in funding for the SDI. Of course, research on anti-ballistic missile technology must continue, but it must be a realistic program. By heeding the concerns expressed by scientists such as these who signed this open letter to Congress, I believe the Congress can fashion a realistic ABM research program.

Perhaps the White House is also at last listening to the scientific community. On June 3, 1986, the President sent a special message to Congress on strategic modernization that dwelled at length on SDI. Nowhere in this message is there any longer the claim that the Star Wars Program will one day render nuclear weapons impotent and obsolete.

I commend these 1,600 scientists. It would have been much easier for them to sign nothing, to say nothing, to do nothing. But they obviously care about our national security, about real security and the sensible use of our defense resources. I ask that the following documents be printed in the RECORD at this point—the "Open Letter to the U.S. Congress" dated June 19, 1986; the statements of Senator DANIEL EVANS, Senator JOHN BACKUS, Daniel S. Fisher, J. Carson Mark, and R.W. WILSON; the respective biographies of the five scientists who presented their open letter; and a State-by-State list of the Government labs and industrial labs where the signatories are currently or formerly employed. I should note that this State-by-State list of labs also includes individual contacts and their telephone numbers.

The material follows:

AN OPEN LETTER TO THE U.S. CONGRESS

June 19, 1986.

We, the undersigned scientists and engineers currently or formely at government and industrial laboratories, wish to express our serious concerns about the Strategic Defense Initiative (SDI), commonly known as "Star Wars". Recent statements from the Administration give the erroneous impression that there is virtually unanimous sup-

port for this initiative from the scientific and technical community. In fact the SDI has grown into a major program without the technical and policy scrutiny appropriate to an undertaking of this magnitude. We therefore feel that we must speak out now.

The stated goal of the SDI is developing the means to render nuclear weapons "impotent and obsolete". We believe that realization of this dream is not feasible in the foreseeable future. The more limited goal of developing partial defenses against ballistic missiles does not fundamentally alter the current policy of deterrence, yet it represents a significant escalation of the arms race and runs the serious risk of jeopardizing existing arms control treaties and future negotiations. Furthermore, in view of the international economic competition faced by the U.S., it should be asked whether the country can afford the diversion of resources, especially scientific and technical manpower, that the SDI entails.

The Congressional Office of Technology Assessment has raised serious questions concerning the scope and scale of the present SDI effort. We urge the Congrss to head these concerns and to limit the SDI to a scale appropriate to exploratory research, while assessing the costs, the risk and the potential benefits of the program in comparison with alternative strategies for strengthening the overall security of the nation. Top priority must be given to this task before the momentum inherent in a program of such magnitude makes this venture irreversible.

[This statement reflects the values of the signatories and not those of the institutions with which they are affiliated.]

PRESENTATION OF SDI PETITION TO CONGRESS

(Statement of Senator Daniel J. Evans)

I am pleased today to accept on behalf of the United States Senate an open letter to Congress signed by more than 1400 scientists and engineers. In the letter, the signatories express concern that we may be moving ahead too quickly with SDI research and that the program has not received the kind of "technical and policy scrutiny appropriate for an undertaking of this magnitude." These are concerns I share.

I welcome this expression of concern from the scientific community because I believe that SDI can benefit from a healthy dose of skepticism. When the skeptics are as distinguished a group as that represented here, we should all take note.

Congress has budgeted roughly $5.5 billion for SDI research in the Department of Defense and Department of Energy budgets since the program was started in fiscal year 1984. For FY 1987 Congress is being asked to spend approximately $5.4 billion in the combined DoD/DoE budget for SDI. I do not believe we will continue to have a responsible, manageable research effort if we elect to spend as much in the next year on SDI as we have spent in the last three years. A highly accelerated research program will inevitably result in waste, overburdened management, and incomplete technical scrutiny.

I recognize that this country has undertaken vast and intense research efforts in the past. Proponents of a fast-paced SDI program regularly cite the Apollo program and the Manhattan project to justify their funding requests. Yet, while the nation stood foursquare behind Manhattan and Apollo, we have no consensus on SDI.

I confess to technical optimism. If we can walk on the moon, we can do anything. But we must not attempt to do everything. We must begin now to formulate our strategic policy for the years to come. It is imperative in a time of scarce financial resources that we develop a plan for the future that is coherent, comprehensive, and consensual. Looking ahead, I am convinced that technology can light the way to a more healthy and secure world. But we must recognize that the boundless creativity of the human mind can conceive equally well technologies of prosperity and technologies of ruin.

Clearly, there are powerful reasons to conduct a healthy ballistic missile defense research program. We cannot afford to ignore the significant strategic defense efforts of the Soviet Union. They continue to devote a large portion of their scientific resources to exploring the technologies we are assessing under SDI. We also cannot afford to ignore the possibility that changing technology will cause us to change our thinking about strategic questions.

But these possibilities do not militate in favor of a precipitously paced program. We need look no further than the waste and abuse in recent military spending to find reasons for prudence in SDI funding.

I am pleased that those most capable of assisting the Congress and the Nation in addressing the technical questions raised by SDI are expressing themselves here today. The program must continue to be subject to critical evaluation from a broad spectrum of technical perspectives. That assessment will in turn help us make sound policy judgments. I hope that those who have signed this letter—and others in the scientific community—will continue to contribute their expertise and continue to express their concerns.

STATEMENT OF R.W. WILSON

The strength of the United States ultimately depends on our economic success. In recent years, more than half of our economic growth has been attributed to technological innovation. It is disturbing to learn that although our R&D efforts are about twice those of Japan, half of ours is directed to military goals. In government sponsored R&D where much of our basic research is done, more two thirds is military and that fraction is expected to increase to three quarters as the SDI program builds up. Since our future developments depend on the results of our current research, this does not bode well for our long term economic strength.

In principal, military R&D could be increased without reducing the civilian effort. In practice, though, the two compete for the same people, and with the Gramm-Rudman-Hollings restrictions on the federal budget they also compete for the same money. As an astronomer, I see the national observatories being cut back to the point that their function is seriously impaired and individual academic investigators find the competition for NSF grants greatly increasing. Money for proposals related to SDI is readily available. I can only assume that this same mechanism for forcing people into SDI research applies in other, more economically significant fields with which I am less familiar.

People will argue that SDI will have technological fallout of economic value. I argue that a large SDI program is a very inefficient way to obtain that fallout. I have spent my professional career at Bell Laboratories which is often cited as an exemplary R&D institution. The approach to research which has worked so well at Bell Labs is to maintain small efforts in many fields, some only peripherally related to the main goals of the organization, but to concentrate most of the effort on the important goals. A well designed SDI research program will have almost as much technological fallout as the massive R&D program that the administration proposes.

In closing, let me say that if I expected that SDI would greatly reduce or eliminate the world wide threat of nuclear weapons any time soon, I would advocate that the U.S. accept the economic consequences of diverting a significant fraction of our R&D effort to that goal. But since I think that the time before SDI increases our security will be decades, if ever, it would be foolish for us to devote a large effort to SDI. Indeed, except for political purposes it is usually not useful to undertake large demonstrations early in the research leading to a new development. SDI is in an early research phase and the program should be limited in size to avoid a large amount of waste.

STATEMENT OF J. CARSON MARK

I was working at Los Alamos before it was shown that a nuclear explosion could be realized. From that time until retiring in 1973 I was continuously engaged in improving the design of nuclear weapons—increasing their yields, reducing their cost in fissile material, making them smaller, and lighter, and more rugged and more adaptable. A great deal was accomplished, and progress along these lines continues. These developments were intended for "defense"; but their most evident effect has been to enhance our ability to inflict damage.

Naturally, others have felt impelled to equip themselves in similar fashion, and they, too, have accomplished a great deal. The result of all this technical virtuousity has been an accelerating erosion of national security—for us as well as others. In 1945 our security against any external threat was impregnable. Today we are more exposed to external threat then ever before.

Each of the superpowers is now able to destroy the other. By intensive applications of technology, the two have reached a stage at which they can only survive together or perish together. Technology has contributed to the second alternative and can no doubt contribute more. Certainly, as applied to the development of weapons, technology has not contributed much—nor does it seem likely to be able to contribute much—to providing an acceptable basis for mutual survival.

Nevertheless, it is now proposed that by a truly massive technological effort—the SDI—we can restore our security. Were that feasible it would indeed be an attractive prospect; but there are many technical reasons to doubt its feasibility. For one thing, whether destined for "success" or not, if persisted in the SDI cannot fail to inspire efforts on the part of others either to emulate it or to override it. It is almost certainly a much simpler technical task to counter an SDI system than to establish a fault-free system in the first place. To a considerable extent, then, the status quo would be maintained, though on a more edgy level. Neither would successful emulation lead to a very different situation. Presumably everyone would then be secure, much as a man in a well-designed bunker may be secure from hostile artillery fire—though perhaps not from cyanide dropped down the ventilators. He would be secure, but in a state of watch-

ing and waiting for his adversary to start something. That is the sort of security which can be achieved by purely technical means.

What is really "impotent and obsolete" about Star Wars is the supposition that enough sufficiently exotic weapons systems can establish security as every man in the street would like to think of it. The SDI bids fair to constitute a monstrous technical effort in the name of "security." So, in its day, was the Maginot Line; and so, before that, was the Great Wall of China. It is not the way to go. For real security one wants, not a new way of glaring at each other's silos, but a new way of ensuring that we survive together. If taken literally and implemented straightforwardly, the sharp reduction in nuclear stockpiles, for which on June 11, 1986, both Reagan and Gorbachev expressed a deep desire, would be a hopeful first step.

STATEMENT OF JOHN BACKUS

Installing a Star Wars system means putting a large fleet of our space weapons over the Soviet Union. The Soviet Union will then be forced to put its own armada in space over the United States.

The weapons and sensors in a Star Wars system will be controlled by a computer as directed by a program. This battle program, in order to respond in a few seconds to the launch of an enemy missile, must be able to carry out an attack without human intervention.

A space battle program is vast, complex, and subject to errors; to be reliable, it must first be tested in millions of real-world situations. But for Star Wars, these real world situations occur in nuclear war, so such a program can never be properly tested and cannot be reliable.

After Chernobyl, we must think about the battle program that the Soviets might produce for their Star Wars system. The safety of the world would depend on that immense program. A single error in either their program or ours could cause an unprovoked attack and initiate a devastating computer controlled war.

I have spent my professional career studying the difficulties of programming. Based on that study I consider it impossible to produce a completely reliable battle program. Many other programming professionals take this same view. And none of us want it confirmed by the installation of Star Wars and a consequent global war.

I call on our military leaders to listen more carefully to these professionals; if they do, they will realize that it is impossible to count—as we must count—on the reliability of battle programs for space.

I call on our political leaders to recognize the total insecurity of a United States that has Soviet weapons hovering over it, a hostile armada controlled by an unreliable program, an armada that will surely be there if we pursue Star Wars.

STATEMENT OF DANIEL S. FISHER

The Strategic Defense Initiative has aroused an unprecedented level of concern among the scientific and technical community in this country. This widespread groundswell of anxiety cuts across traditional political and professional lines.

Yet the Administration does not seem to have listened to the very engineers and scientists upon whom President Reagan called to lead the effort to develop a shield against nuclear attack. Indeed, the critics of SDI have been characterized by leading Administration spokesmen as a "few diehards" who are "politically motivated" and do not represent mainstream views.

Last winter, a group of us working at Bell Labs felt compelled to make an effort to remedy this situation. Accordingly, we drafted an open letter to Congress with the aim of publicly expressing our grave misgivings and emphasizing some of the problems and dangers inherent in the Strategic Defense Initiative.

The Open Letter urges Congress to heed these concerns and to limit the SDI to a scale appropriate to exploratory research while assessing the costs, the risks, and the potential benefits in comparison with alternative strategies for strengthening the security of the nation.

In the past twelve weeks, over 1600 scientists and engineers from 26 government and 52 industrial labs around the country have signed the petition. Included in this group are many of the most distinguished members of the technical community. I regret to say that many other individuals have been afraid to publicly express their views by signing the letter because of legitimate fears of reprisals.

The Strategic Defense Initiative has been advertised to the public as a program to develop the means to render nuclear weapons "impotent and obsolete." We believe that realization of this dream is not feasible in the foreseeable future. This conclusion is based on collective experience with large scale technology and basic technical sense. It would thus be imprudent to accept this goal as a cornerstone of U.S. strategic policy.

On the other hand, the more limited goal of developing partial defense ballistic missiles cannot fundamentally alter our reliance on the current policy of Mutually Assured Destruction. However it would represent a significant escalation of the arms race.

We are thus faced with a sharp contrast between Mr. Reagan's seductive dream and reality; a contrast between a perfect shield and a leaky Star Wars system which would not protect the people of this land.

We urge Congress to weigh carefully the SDI option—a long and expensive route ridden with pitfalls—against other more rational paths to a secure world.

BIOGRAPHIES

PIERRE C. HOBENBERG

(Organizer)

Born: 10/3/34.

Ph.D. 1962 Physics, Harvard University.

AT&T Bell Labs (currently Head of Theoretical Physics Department).

Member NSF Materials Research Advisory Committee 1981-86.

Vice President for Physical Science, New York Academy of Sciences 1986.

DANIEL S. FISHER

(Organizer)

Born: 11/21/56.

Ph.D. 1979 Physics, Harvard University.

AT&T Bell Labs, Member of Technical Staff 1979-present.

Chosen by Science Digest magazine (Dec. 1984) as one of 100 brightest scientists under 40 (in U.S.).

J. CARSON MARK

Born: 7/6/13.

Ph.D. 1938 Mathematics, University of Toronto.

Los Alamos Scientific Laboratory 1945-73; Theoretical Division Leader 1947-73 in charge of new weapons design.

Currently: consultant at Los Alamos and on many government boards, including (since 1976) Advisory Committee on Reactor Safeguards of the Nuclear Regulatory Commission.

JOHN BACKUS

Born: 12/3/24.

MS 1950 Mathematics, Columbia University.

IBM 1950-present.

Currently: IBM Fellow, IBM Almaden Research Center. Inventor of Fortran (1957).

AM Turing Award 1977 (highest computer science honor).

National Medal of Science 1975 (President Ford).

Member, National Academy of Science.

Member, National Academy of Engineering.

ROBERT W. WILSON

Ph.D. 1962 Physics, California Institute of Technology.

AT&T Bell Labs, currently Head of Radio Physics Research Department.

Nobel Prize in Physics, 1978 (co-discoverer of cosmic black body background radiation from the Big Bang).

Member, National Academy of Science.

GOVERNMENT LABS (Symbol*)—INDUSTRIAL LABS (Symbol)

ARIZONA

Flagstaff: *Lowell Observatory.

Phoenix: Harrington Research.

CALIFORNIA

Albany: *U.S. Department of Agriculture; *U.S. Department of Interior.

Anaheim: Beckman Instruments, Inc.

Berkeley: *Lawrence Berkeley Lab: Owen Chamberlain, William Fisk. Libby Lab: *Superconducting Supercollider.

Garden Grove: Perkin-Elmer.

Livermore: *Lawrence Livermore Lab: Hugh DeWitt.

Los Angeles: Information Sciences Institute; White Memorial Medical Center.

Menlo Park: SRI International; *U.S. Geological Survey.

Mountain View: California Biotechnology; Sun Microsystems.

Palo Alto: Hewlett-Packard; Schlumberger-Doll Research; Spectra Diode; Siltec Corporation; Silicon Graphics; *Stanford Linear Accelerator; Xerox Palo Alto Research Center: Donald Smith; Zoecon Corporation.

Pasadena: Phytogen; *Jet Propulsion Laboratory.

Redondo Beach: T.R.W.

San Carlos: Varian/EIMAC.

San Jose: IBM Almaden Research Center: John Backus.

Santa Barbara: EG&G Energy Measurements.

Saugus: Allen E. Seward Engineering Geology.

Thousand Oaks: Amgen.

COLORADO

Boulder: National Center for Atmospheric Research.

Denver: *U.S. Geological Survey: Robert Moench.

CONNECTICUT

Ridgefield: Schlumberger-Doll Research: Larry Schwartz.

DELAWARE

Wilmington: DuPont de Nemours Experimental Station: Gilbert Sloan.

FLORIDA

Patrick Air Force Base: *Air Force Technical Application Center: Robert Zavaldi.

ILLINOIS

Argonne: *Argonne National Laboratory: Albert Crew.
Batavia: *Fermi National Laboratory: Joseph Lach.
Chicago: Travenol Laboratories.
Naperville: AT&T Bell Laboratory.
Northbrook: IMC R&D Laboratories.

IOWA

Ames: *NADC.

KANSAS

Salinas: Land Institute.

MARYLAND

Baltimore: Space Telescope Science Institute.
Bethesda: *National Institute of Health: Marshall Nirenburg.
Gaithersburg: *National Bureau of Standards.
Rockville: ORI Inc.

MASSACHUSETTS

Bedford: Mitre Corporation.
Brookline: Boston Electronic Corporation.
Lexington: Evans, Griffiths and Hart: Timothy Hart. Raytheon Company.
Lincoln: MIT Lincoln Laboratory.

MICHIGAN

Ann Arbor: Organization Control Service.
Detroit: Ford Motor Company: Seymour Newman.

MONTANA

Hamilton: Ribi Immunochem Research: Edgar Ribi.

NEW JERSEY

Annandale: Exxon Research and Engineering.
Highland Park: Kesler Engineering.
Holmdel: AT&T Bell Laboratories: Robert W. Wilson (Nobel).
Murray Hill: AT&T Laboratories: Pierre Hohenberg; Kenneth Thompson.
Princeton: E.R. Squibb & Sons.
Red Bank: Bell Communications Research.
Somerville: R.C.A.

NEW MEXICO

Albuquerque: *Sandia National Laboratories.
Los Alamos: *Los Alamos National Laboratories: J. Carson Mark (ret.).
Sunspot: *Sacramento Peak Observatory.

NEW YORK

New York: R.A. Fischer Company Inc.; Population Council; Proctor & Gamble; Raytheon Company.
Pearl River: Lederle Laboratories.
Rensselaer: Sterling-Winthrop Research Institute.
Rochester: Eastman Kodak Research Laboratories.
Rye: Sloan Kettering Institute.
Schenectady: General Electric Corporate R&D.
Upton: *Brookhaven National Laboratories: Gearhart Friedlander.
Webster: Xerox J.C. Wilson Center for Technology: William Anderson; George Vineyard.
White Plains: Rohrer Group Incorporated.
Yorktown Heights: IBM J.T. Watson Research Center: Ted Schultz (150 signatures).

NORTH CAROLINA

Research Triangle Park: Wellcome Research Laboratories.

OHIO

Columbus: Batelle Columbus Laboratories; Biotechna Diagnostics.
Huber Heights: Universal Energy Systems.
Shaker Heights: Standard Oil Company Research Center.

PENNSYLVANIA

Bethlehem: Fuller Company.
Philadelphia: Fox Chase Cancer Center.
Pittsburgh: Graphic Arts Technical Foundation.
Spring House: Rohm and Haas Company.

TENNESSEE

Oak Ridge: *ATDD/NOAA: Dennis Baldocchi. *ATDL.

TEXAS

Dallas: Sun Oil Company.
Houston: *NASA: Jack Kerrebock (formerly NASA).
Texas Instruments: Douglas Verret.

VIRGINIA

Charlottesville: National Radio Astronomy Observatory.
McLean: SC&A Inc.: Sanford Cohen.

WASHINGTON

Seattle: Boeing Aerospace Co.; Boeing Artificial Intelligence Center: Doug Schuler. Fred Hutchinson Cancer Research Center; John Fluke Manufacturing Co., Inc.

DISTRICT OF COLUMBIA

E.P.A. Office of Radiation Programs: *Naval Research Laboratories; *National Science Foundation; *Smithsonian Institution.●

PROPOSED ARMS SALES

● Mr. LUGAR. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive formal notification of proposed arms sales under that act in excess of $50 million, or in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon receipt of such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of proposed sales be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is available to the full Senate, I ask to have printed in the RECORD at this point the notification I have received.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC, June 13, 1986.

Hon. RICHARD C. LUGAR,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 86-37, concerning the Department of the Army's proposed Letter(s) of Offer to Kuwait for defense articles and services estimated to cost $70 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

PHILIP C. GAST,
Director.

[Transmittal No. 86-37]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Kuwait.

(ii) Total Estimated Value:

	Million
Major defense equipment [1]	$0
Other	70
Total	70

[1] As defined in Section 47(6) of the Arms Export Control Act.

(iii) Description of Articles or Services Offered: Six hundred eighty-five 5-ton trucks, support, diagnostic test equipment, and concurrent spare parts.

(iv) Military Department: Army (UHL).

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: None.

(vii) Section 28 Report: Case not included in Section 28 report.

(viii) Date Report Delivered to Congress: June 13, 1986.

POLICY JUSTIFICATION

KUWAIT—5-TON TRUCKS

The Government of Kuwait has requested the purchase of 685 5-ton trucks, support diagnostic test equipment, and concurrent spare parts. The estimated cost is $70 million.

This sale will contribute to the foreign policy and national security goals of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Kuwait needs these trucks to provide improved mobility for its self-defense forces and to enhance the Kuwait contribution to the Gulf Cooperation Council regional defense organization. Kuwait will have no difficulty absorbing these trucks into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the AM General Corporation of Livonia, Michigan.

Implementation of this sale will require the occasional deployment to Kuwait of three U.S. Government personnel for customer assistance visits (estimated four, two-week visits).

There will be no adverse impact on U.S. defense readiness as a result of this sale.●

NAUM AND INNA MEIMAN: DAY BY DAY

● Mr. SIMON. Mr. President, Naum and Inna Meiman sit in their Moscow apartment, living each day with the hope that the Soviets will finally relent and grant them permission to emigrate to Israel.

Inna has cancer of the neck that has reduced her days to painful confinement. Naum, a brilliant mathemetician and physicist, can no longer practice has craft as he was fired over 10 years ago when he applied to emigrate. In the Soviet Union, once you are fired because you have applied to emigrate, you will most likely never be allowed to work in your field again.

Naum and Inna are an elderly, harmless couple. The cost to the Soviets in releasing the Meimans is negligible. The positive publicity the Soviets will receive is considerable.

I strongly urge the Soviets to allow the Meimans to emigrate to Israel.●

EXTENSION OF MANUFACTURING CLAUSE OF COPYRIGHT ACT

● Mr. D'AMATO. Mr. President, I rise today to join my distinguished colleague from South Carolina in cosponsoring S. 1822, legislation to extend the manufacturing clause of the Copyright Act.

The manufacturing clause first appeared in 1891, when the domestic printing industry was in its infancy. It provides that material that is preponderantly of a nondramatic literary nature and is written in English by an American author or by an author domiciled in the United States must be printed in the United States or Canada in order to be entitled to the full and unqualified protection of U.S. copyright laws. The manufacturing clause, which is now due to expire on June 30, 1986, has been extended several times, most recently in 1982.

It is time the United States stood strong and sent a message to those of our trading partners that are stealing our technology and using high tariffs to block the entry of U.S. goods. It is also critical that we act to preserve U.S. jobs. For far too long, this Nation and our creative and working people have been hurt by the unfair and predatory trade practices of other countries. The extension of the manufacturing clause will provide needed protection for our workers, particularly those in the printing trades. Without this clause, it is projected that 300,000 jobs would be lost. We simply cannot afford this magnitude of loss.

Mr. President, this legislation gives other countries an appropriate time period to change their predatory practices and to provide copyright protection to the works of U.S. authors. If our trading partners are serious about upgrading their standards and begin to engage in fair trading practices this legislation will not adversely affect them.●

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY JURISDICTION BILL

● Mr. DECONCINI. Mr. President, on Tuesday of this week I joined my distinguished colleague, the senior Senator from Arizona, in introducing a bill to grant the Salt River Pima-Maricopa Indian community jurisdiction for criminal misdemeanor offenses committed within the reservation boundaries by individuals who are not Indians or members of the Salt River Pima-Maricopa Indian community.

This proposed bill has the support of the Governor and the attorney general of Arizona. The cities of Scottsdale, Mesa, Tempe, and Phoenix also have endorsed the legislation. The bill addresses the critical need for local governments like the Salt River Pima-Maricopa Indian Community Council to have the jurisdiction and ability to deal with law enforcement within their territorial areas. The unanimous support of the neighboring municipalities for this proposed bill underscores the importance of this principle to all local governments.

The Salt River Indian community governs itself responsibly and maintains a judicial system which meets all commonly accepted standards of fairness. It has had in place for years a government with a reliable system of checks and balances. Yet, the community is unable to prosecute those persons who are not members of the tribe and who commit misdemeanors in violation of the tribe's criminal ordinances. The proposed bill will enable the community to enforce its criminal misdemeanor ordinances without regard to whether the offender is a member of the tribe or is an Indian. This proposed grant of jurisdiction would not diminish State jurisdiction.

I urge my colleagues to recognize the importance of this measure to the community and its neighbors in their efforts to maintain law and order in their communities.●

Mr. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, apparently there has been some uncertainty. There will be no more votes tonight. We will have our wrap-up in about 1 minute.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

□ 2240

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE TAX REFORM BILL

Mr. DOLE. Mr. President, first, let me thank all my colleagues on both sides of the aisle for their cooperation. This is a rather extensive consent agreement but I believe it will ensure that we will pass this bill with an overwhelming margin on Tuesday afternoon at 4 o'clock. That will be a tribute not only to President Reagan, who initiated tax reform, but also to the distinguished chairman of the committee [Mr. PACKWOOD], the distinguished leader on the Democratic side [Mr. LONG], and many others on both sides who have worked on a totally bipartisan basis.

I am pleased to know that we do have the agreement, that we are prepared to move forward tomorrow. I have been cautioned by my colleagues that there are a number of our colleagues on both sides who cannot be here tomorrow. There will not be any more than four rollcall votes but we are not going to punish anybody by having four rollcall votes. We do not need to have votes, but there will be no more than four.

On Monday, there will be no record votes but there will be a number of votes, I assume, starting Tuesday, and it is going to be a very busy day on Tuesday. There will be no time set aside for policy luncheons. If we have a policy luncheon by either party, we will still be answering rollcalls or making votes during that 2-hour period.

EXECUTIVE CALENDAR

Mr. DOLE. Mr. President, I inquire of the distinguished acting minority leader if he is in a position to confirm the following nominations of the Executive Calendar:

Calendar No. 854, Dorcas R. Hardy; Calendar No 896, Robert E. Windom; Calendar No. 897, David Lowenthal; Calender No. 898, Peter R. Greer; and Vice Admiral Moranville, and Vice Admiral Frank Kelso reported from Armed Services Committee today.

Mr. MATSUNAGA. We have no objection on this side, Mr. President.

Mr. DOLE. I thank the distinguished acting minority leader [Mr. MATSUNAGA].

EXECUTIVE SESSION

Mr. DOLE. Mr. President, I ask unanimous consent that the Senate go into executive session in order to confirm the nominations just identified.

There being no objection, the Senate proceeded to the consideration of executive business.

Mr. DOLE. Mr. President, I ask unanimous consent that the nominations be considered en bloc and confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations are considered en bloc and confirmed en bloc.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Dorcas R. Hardy, of California, to be Commissioner of Social Security.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Robert E. Windom, of Florida, to be an Assistant Secretary of Health and Human Services.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

David Lowenthal, of Massachusetts, to be a member of the National Council on the Humanities.

DEPARTMENT OF EDUCATION

Peter R. Greer, of Maine, to be Deputy Under Secretary for Intergovernmental and Interagency Affairs, Department of Education.

IN THE NAVY

Vice Adm. Frank B. Kelso II to be admiral.

Vice Adm. Kendall E. Moranville to be admiral.

Mr. DOLE. I move to reconsider the vote by which the nominations were considered and confirmed en bloc.

Mr. MATTINGLY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DOLE. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

DORCAS HARDY'S NOMINATION AS COMMISSIONER OF SSA

● Mr. RIEGLE. Mr. President, I rise to speak on the pending nomination of Dorcas Hardy to the position of Commissioner of the Social Security Administration. I have reservations about the nomination of Ms. Hardy to serve in this capacity and I want to share those concerns with my colleagues.

Over the last few years we have slowly been making progress in insulating the Social Security programs from the political arena. I have long felt that the Social Security Retirement, Survivors, Disability, and Health Care Programs were too important to constantly be dragged through the political controversies of the moment. One of the ways we sought to achieve this important insulation was to remove Social Security from the unified Federal budget. After several years of seeking that objective, we were successful in the Social Security Amendments of 1983, in enacting provisions that would remove the OAS, DI, and HI trust funds from the unified budget effective in fiscal year 1993. Not feeling satisfied with that long delay, we fought for the immediate removal of the OAS and DI trust funds and were successful in including provisions to this effect in the Gramm-Rudman legislation.

Another way we are working to insulate Social Security programs from the politics of the moment, is by attempting to enact legislation to remove the Social Security Administration from the Department of Health and Human Services, establishing SSA as an independent agency. I am the cosponsor of two bills this Congress, S. 17, introduced by Senator MOYNIHAN, and S. 122, introduced by Senator PRYOR, which would accomplish this objective. It is my understanding that the House Subcommittee on Social Security recently reported out similar legislation.

In addition to these important goals, I recently cosponsored S. 2542, introduced by Senator MOYNIHAN, designed to improve the management of the Social Security trust funds assets to prevent their inappropriate use as was the case this winter—and at earlier periods—during debt limit crises.

So Mr. President, the Congress is moving in the direction of pulling Social Security out of the political arena, and it is because of the potential of jeopardizing the progress we are making in this area that causes me concern with regard to the nomination of Dorcas Hardy to be the top ranking Social Security Administrator.

Many of us are aware of the allegations that have been raised against Ms. Hardy during the Senate review of her nomination to the position of Commissioner. Those allegations, while troubling if true, are not now as unsettling as what we do know as accurate. We do know that in fulfilling her role as Assistant Secretary for the Office of Human Development Services [OHDS] in HHS she consistently cast a political shadow over the programs and personnel she was entrusted to administer. In testimony before the House Subcommittee on Government Operations—investigating alleged improprieties in her management of OHDS—Ms. Hardy said that she had been trying to advance the goals of a "conservative opportunity society" for 5 years, but had met resistance from the "liberal welfare state" proponents at HHS.

When she assumed office as Assistant Secretary at Human Development Services, Ms. Hardy instituted a new procedure of "administrative review" which allowed her top staff to identify proposals that would bypass the competitive peer review process that assigns funding priorities. This procedure was finally discontinued this year after an investigation and hearings by the House Subcommittee on Government Operations. As a result of these practices and others, Ms. Hardy apparently so politicized the grant awards process that it has been reported to me that many respected professionals will no longer apply for funds, and have withdrawn from participating in the peer review process.

In an area of more immediate concern to me, when questioned about the delay in promulgating regulations implementing the Dependent Care Block Grant Program—which established the "latchkey" child care and Information and Referral programs—Ms. Hardy testified that "we" do not believe these programs to be necessary, and did not seem concerned that despite that opinion, they were mandated by law. When called to testify before the Subcommittee on Children, Committee on Labor and Human Resources, to defend her actions in this area, Ms. Hardy choose instead to issue a rather perfunctory, nondescript statement.

The Commissioner of the Social Security Administration may be facing difficult times and may be forced to make critical decisions if the proposed staff reductions and often discussed district office closing are implemented. It is my hope that these policies will not be implemented for Federal budgetary purposes outside of SSA, and if implemented, will be handled in such a way that does not adversely affect Social Security beneficiaries.

Mr. President, currently 37 million Americans receive benefits from our Social Security System. For millions it is a vital link assuring their basic survival. It has a budget in excess of $200 billion per year, and is by far, the single largest and thereby most complex set of programs administered by the Federal Government. The public's confidence in Social Security can only be assured if the program is administered in a fair, nonpartisan fashion. It is my hope that the highly charged political environment characteristic of Ms. Hardy's tenure as Assistant Secretary in HHS, will not be transferred to her new post at the Social Security Administration. The millions of disabled and elderly Americans who depend on their benefit checks, as well as the tens of millions of working men and women who contribute into the Social Security System, deserve nothing less.●

DR. ROBERT WINDOM

● Mrs. HAWKINS. Mr. President, it is a pleasure for me today to express my strong support for Dr. Robert Windom who has been nominated by President Reagan to fill the position of Assistant Secretary for Health. On June 18, the Senate Labor and Human Resources Committee approved Dr. Windom's nomination; and today I am recommending him to the full Senate, hoping he will soon be confirmed.

The post of Assistant Secretary for Health is one of far-reaching scope and responsibility. It requires medical knowledge, of course. But the person who fills this position must also be creative and compassionate. He must be

able to lead and to be flexible. And he must be able to act quickly. Our Nation's health is very much in his hands.

Bob Windom's many accomplishments demonstrate that he is equal to the task presented to him. It is these accomplishments and also my personal knowledge of Bob Windom, both as a doctor and as a human being that inspired me to nominate him for this important position.

I would like to list some of those accomplishments for you. Bob graduated from Duke University Medical School in 1956. As you know, I have had the opportunity to examine the Duke Hospital up close lately. So I know Bob was well educated.

In the years that followed, Bob has served as president for the Florida Heart Association, the Sarasota County Medical Society, the Florida West Coast Academy of Medicine, and the Florida Medical Association.

In addition to teaching internal medicine at the University of South Florida, Bob hosts a weekly TV show, "Medical Viewpoint" on channel 40 in Sarasota.

I would like to take a moment and tell you about a very special project that Bob has been involved in promoting * * *. Bob helped start the Senior Friendship Center Health Clinic in Sarasota where retired doctors and nurses help the poor and others who are outside the mainstream of health care. This has proved a popular idea. It has spread across the west coast of Florida and Bob says he'd like to see it spread nationwide. I share in that vision.

Bob has been presented with the Outstanding Citizen of Sarasota Award. He has also been named "the Patriot of Sarasota."

As a U.S. Senator, it has been my responsibility and my privilege to recommend dozens of men and women for positions in the administration and the judiciary. I have learned that it is not an easy job, but what it often comes down to is looking for qualities of leadership. As with my other nominees, I am sure that Bob Windom has what is needed to lead our Nation's premiere health and medical research agencies.

Mr. President, I appreciate the expeditious nomination of Dr. Robert Windom for the position of Assistant Secretary for Health and I am looking forward to his confirmation by the Senate.●

NOMINATION OF PETER R. GREER

Mr. MITCHELL. Mr. President, I support the nomination of Peter R. Greer to be Deputy Under Secretary of Education for Intergovernmental Relations.

Since 1979, Mr. Greer has served as the superintendent of the Portland Public School System in Portland, ME. During his tenure in Portland, Mr. Greer effected a number of innovative changes in the educational program from grades K–12, including the implementation of programs in the teaching of both the Russian and Chinese languages.

Earlier in Mr. Greer's career he served as the associate director on the National Humanities Faculty in Concord, MA. I strongly support his committment to the teaching of the humanities in our public schools.

I look forward to Mr. Greer's confirmation by the Senate and to his tenure as Deputy Under Secretary of Education for Intergovernmental Relations. I am confident that he will bring invaluable knowledge and committment to education to this position.● Mr. COHEN. Mr. President, I am pleased and proud to be able to address the Senate today on the nomination of Peter R. Greer to be Deputy Under Secretary of Education for Intergovernmental and Interagency Affairs. Mr. Greer is eminently qualified for this post and will, I know, serve in it well.

Peter Greer will come to his position as Deputy Under Secretary of Education by way of more than 20 years as an educator. He spent the first part of his career as a teacher in high school and junior high school classrooms. The last 12 years he has spent with the public school system of Portland, ME—and the last 6 of these as superintendent. Clearly, Peter Greer is an educator intimately acquainted with the art and the craft of education.

As superintendent of the Portland Public Schools, Peter Greer has successfully built a reputation for excellence in education. Over the course of his tenure, Portland students have made dramatic gains in standardized test scores. He has worked to strengthen public support for public education and has seen to the skillful husbandry of available resources. Three of his schools have been cited for excellence by the National Secondary School Recognition Program of the U.S. Department of Education.

Peter Greer has changed the shape of the Portland schools through a wide array of management and curriculum initiatives. He introduced new teacher and administrator performance standards and professional development programs for staff members. He established a junior great books program, an elementary and secondary ethics curriculum, and an elementary and secondary economics curriculum. He has seen to the revitalization of language instruction, including the establishment of a course in the Chinese language and a regional course in the Russian language.

Peter Greer's tireless work for the Portland School System has shown his commitment to educational excellence to be second to none. I am delighted that he has been given the chance to use his considerable expertise and energies in working for the betterment of education nationally. I commend him to my colleagues in the Senate and wish him well in his new endeavor.●

ORDERS FOR TOMORROW

RECESS UNTIL 9:30 TOMORROW

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 9:30 a.m. tomorrow, Friday, June 20, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

□ 2150

RECOGNITION OF CERTAIN SENATORS

Mr. DOLE. I further ask unanimous consent that following the recognition of the two leaders under the standing order, there be special orders in favor of the following Senators for not to exceed 5 minutes each: HATCH, PROXMIRE, HATFIELD, GORE, MELCHER, and STEVENS.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. DOLE. I ask unanimous consent that after the special orders, there be a period for the transaction of routine morning business not to extend beyond 10:15 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. At 10:15 the Senate will resume consideration of H.R. 3838, the tax reform bill, under previous unanimous-consent agreement and votes will occur during Friday's session.

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move the Senate stand in recess until 9:30 a.m., Friday, June 20, 1986.

I thank the acting minority leader.

The motion was agreed to; and, at 9:45 p.m., the Senate recessed until Friday, June 20, 1986, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate June 19, 1986:

DEPARTMENT OF STATE

James Malone Theodore Rentschler, of Pennsylvania, a career member of the senior Foreign Service, class of Minister-Counselor, to be Ambassador Extraordinary and Pleni-

potentiary of the United States of America to the Republic of Guinea.

AFRICAN DEVELOPMENT FOUNDATION

Milton Frank, of California, to be a member of the Board of Directors of the African Development Foundation for the remainder of the term expiring February 9, 1990, vice A.C. Arterbery, resigned.

PEACE CORPS NATIONAL ADVISORY COUNCIL

Calvin Henry Raullerson, of Texas, to be a member of the Peace Corps National Advisory Council for a term of 1 year expiring November 29, 1986, new position.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Rear Adm. Francis D. Moran, National Oceanic and Atmospheric Administration, to be Director of the Commissioned Officer Corps, National Oceanic and Atmospheric Administration, vice Rear Adm. Kelly E. Taggart.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Carol Fraser Fisk, of Virginia, to be Commissioner on Aging, vice Mari P. Tolliver, resigned.

EXPORT-IMPORT BANK OF THE UNITED STATES

Simon C. Fireman, of Massachusetts, to be a member of the Board of Directors of the Export-Import Bank of the United States for the remainder of the term expiring January 20, 1987, vice Richard H. Hughes, resigned.

IN THE AIR FORCE

The following-named officers for appointment in the Reserve of the Air Force to the grade indicated, under the provisions of sections 593, 8218, 8373, and 8374, title 10, United States Code:

To be major general

Brig. Gen. Gene A. Budig, xxx-xx-xxxx FG, Air National Guard of the United States.

Brig. Gen. Wayne O. Burkes, xxx-xx-xxxx xxx-x... FG, Air National Guard of the United States.

Brig. Gen. Charles W. Harris, xxx-xx-xxxx xxx-x... FG, Air National Guard of the United States.

To be brigadier general

Col. Patrick S. Boab, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. John D. Campbell xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Wallace P. Carson, Jr., xxx-xx-xxxx xxx-x... FG, Air National Guard of the United States.

Col. Robert J. Dwyer, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Timothy T. Flaherty, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Frank B. Holman xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Harvey D. McCarty, xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Edward E. Parsons, Jr., xxx-xx-xxxx xxx-x... FG, Air National Guard of the United States.

Col. Edward J. Philbin xxx-xx-xxxx FG, Air National Guard of the United States.

Col. Thomas J. Quarelli xxx-xx-xxxx FG, Air National Guard of the United States.

Col. LeRoy Thompson, xxx-xx-xxxx FG, Air National Guard of the United States.

IN THE MARINE CORPS

The following-named officers of the Marine Corps Reserve for permanent appointment to the grade of colonel, under title 10, United States Code, section 5912:

Alley, William H., Jr., xxx-...
Ampagoomian, Barbara A., xxx-...
Appel, Ronald J., xxx-...
Barnes, Clarke C., xxx-...
Barney, Douglas C., xxx-...
Benson, Stanley L., xxx-...
Benson, William W., xxx-...
Coffman, Richard W., xxx-...
Conroy, Dennis A., xxx-...
Cook, Paul J., Jr., xxx-...
Dadd, Benjamin R., Jr., xxx-...
Danehy, Kevin R., xxx-...
Daniel, William R., xxx-...
Duffy, Dennis M., xxx-...
Duffy, Peter A., xxx-...
Gaugush, Jeffrey A., xxx-...
Hanford, Leonard D., xxx-...
Hansen, Harold D., Jr., xxx-...
Harrison, Henry S., xxx-...
Herak, James S., xxx-...
Higginbotham, Robert L., Jr., xxx-...
Hill, Byron E., xxx-...
Hugya, John A., xxx-...
Johnson James L., xxx-...
Johnson, Philip L., xxx-...
Jones, John L., xxx-...
Kirkman, Robert L., xxx-...
Kulczycki, Richard S., xxx-...
Lanier, Elton R., xxx-...
Leighton, John H., xxx-...
McCann, Joseph P., xxx-...
McDaniel, Ronald D., xxx-...
McKnight, Thomas J., III, xxx-...
Moffett, William A., III, xxx-...
Moore, Leon H., xxx-...
Mulligan, Dennis K., xxx-...
Naughton, Michael J., xxx-...
Nowak, Laurance S., xxx-...
O'Kelley, James T., Jr., xxx-...
Petersen, Roger K., xxx-...
Pierce, Darvin D., xxx-...
Polhemus, Richard J., xxx-...
Raymond, Herbert D., III, xxx-...
Richards, Robert C., xxx-...
Riggs, Robert O., xxx-...
Rodriguez, Jose E., xxx-...
Rollins, Richard G., xxx-...
Romey, Paul K., Jr., xxx-...
Rosbe, William L., xxx-...
Sherwood, Donna J., xxx-...
Singer, William R., xxx-...
Sinkinson, William R., Jr., xxx-...
Skiles, James L., xxx-...
Snyder, Joseph D., xxx-...
Southworth, Edward G., xxx-...
Speer, Thomas P., xxx-...
Stroud, Luther P., Jr., xxx-...
Suter, Ronald J., xxx-...
Wall, David F., xxx-...
Wilbourne, Frank P., III, xxx-...
Winkler, John T., xxx-...
Wise, Richard G., xxx-...
Young, William R., xxx-...

CONFIRMATIONS

Executive nominations confirmed by the Senate June 19, 1986:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Dorcas R. Hardy, of Califorina, to be Commissioner of Social Security.

Robert E. Windom, of Florida, to be an Assistant Secretary of Health and Human Services.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

David Lowenthal, of Massachusetts, to be a member of the National Council on the Humanities for a term expiring January 26, 1992.

DEPARTMENT OF EDUCATION

Peter R. Greer, of Maine, to be Deputy Under Secretary for Intergovernmental and Interagency Affairs, Department of Education, vice A. Wayne Roberts.

The above nominations were approved subject to the nominees' commitments to respond to requests to appear and testify before any duly constituted committee of the Senate.

The following-named officer, under the provisions of title 10, United States Code, section 601, to be assigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be admiral

Vice Adm. Frank B. Kelso II, xxx-xx-xxxx/1120, U.S. Navy.

The following-named officer, under the provision of title 10, United States Code, section 601, to be reassigned to a position of importance and responsibility designated by the President under title 10, United States Code, section 601:

To be vice admiral

Vice Adm. Kendall E. Moranville, xxx-xx-x.../1310, U.S. Navy.